

***United States Court of Appeals
for the Second Circuit***

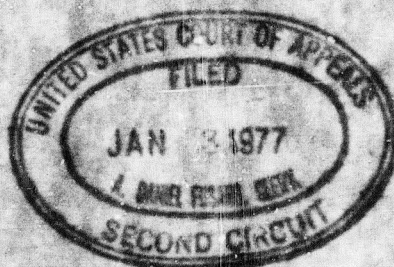


**APPELLANT'S
APPENDIX**

76-1502

B

APPENDIX FOR
APPELLANT PARRAS



PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

REUBEN DARIO PARRAS,

Appellant.

Docket No. 76-1502

APPENDIX FOR APPELLANT
REUBEN DARIO PARRAS

BARRY MALLIN, ESQ.,
Attorney for Appellant
Suite 201
One Seventy Broadway
New York, New York 10038
(212) 638-5766
(212) 349-1980

APPENDIX

CONTENTS OF APPENDIX

Appellant's appendix contains the following material from the record on appeal:

1. Docket Entries
2. Indictment
3. Judgment of Convictment (10/22/76)
4. Government's Exhibit Gx 3A (transcript of Tape Recording, 4/7/76, 10:15 p.m.)
5. Government's Exhibit Gx 3B (Transcript of Tape Recording, 4/7/76, 10:30 p.m.)
6. Exerpts from Testimony of Agent Rodriquez (27-80-Numberals refer to page numbering in trial transcript)
7. Colloquy between Judge and Counsel (81-94)
8. Exerpts from Re-Call Testimony of Agent Rodriquez (95-99)
9. Exerpts from Testimony of Agent Berberich (102-103; 120-122)
10. Testimony of Margrita Mensa (168-186)
11. Colloquy (197-198)
12. Charge to Jury (256-271)
13. Request of Jury, Re: Hearing of Tapes (274-275)

BEST COPY AVAILABLE

DEC 6 1976

A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

76 CR 280

JOHN-DGE-aka-"Roberto"
REUBEN DARIO PARRAS

US TITLE 18 U.S.C.
21-841(a)(1)
18-2

OFFENSES CHARGED
Did possess with intent to
distribute and did distribute
cocaine

4

CLOSED

H. KEY DATES & INTERVALS

ARREST or	INDICTMENT	X	ARRAIGNMENT	TRIAL
U.S. Custody: 325	High Risk Date: 4-15-76	Information	5/18/76	8/16/76
Summons Served	Warrant Waived	Superior Indictment	Final Pleadings	8/19/76
First Appearance	In Charging District			

SEARCH WARRANT	ISSUED	RETURN	DATE	INITIAL NO.	OFFICER
Summons	Issued	Served			
Arrest Warrant Issued					
COMPLAINT					
OFFENSE (In Complaint)					

U.S. Attorney or Asst.

Richard Appleby

ATTORNEYS

Peter Passalacqua Barry Mallin
32 Court St., Bklyn, NY. 11201 170 Broadway, NY
852-2634 638-5766 or 349-1980

YOLANDA BOLANOS 1

- 4-15-76 Before BRAMWELL, J - Indictment filed - Bench Warrant Ordered.
- 4/20/76 Bench warrant issued
- 5/16/76 Before PIATT, J. - Case called - deft present - interpreter present - deft arraigned and court enters a plea of not guilty - bail set at \$100,000.00 surety bond - Peter Passalacqua assigned as counsel for deft - case adjd to 5/28/76 before Judge Judd - caption amended to refl true name
- 5/18/76 Financial affidavit filed
- 5-20-76 By PIATT, J - Order appointing counsel filed (dated May 18, 1976)
- 6-1-76 Before PIATT, J - case called - deft not present - counsel present - case held and concluded - adjd to June 2, 1976 for trial.
- 6-28-76 Before JUDD, J - case called - deft present - counsel Peter Passalacqua reported in the hospital - Albert Boyne sworn as interpreter - new counsel appt for deft under CJA - order signed - case adjd to 8-16-76 for trial.
- 8-23-76 Voucher for expert services filed.

- 8-25-76 By JUDD, J - Order appointing counsel filed
- 7/13/76 Notice of Readiness for Trial filed.
- 8-17-76 Dooling J - Adjudged that deft was guilty of an unexcused contempt committed in the actual presence of the court, not involving disrespect to or criticism of the judge, and she is and was committed to the custody of the attorney General for 3 months. (witness Livia Butron) Certified copies to Marshal.
- 8-18-76 Defts Requested Jury Instructions filed (forwarded to Chambers)
- 8-19-76 Defts request to charge filed (ret'd to Chambers)
- 8-19-76 Voucher for expert services filed.
- 8-19-76 Judgment of Conviction ret'd and filed as to Livia Butron deft
- 8-16-76 Witness del. to Warden, MCC on 8-16-76
- Before DOOLING J - case called - deft & counsel Barry Mallin present - Albert Boyne sworn as interpreter - trial ordered and begun - Jurors selected and sworn - defts opening - Jury dismissed for the day - Livia Butron sworn as a witness for the Govt. Witness refused to answer on self incrimination etc. Adjudged to be in criminal contempt of court and committed to the custody of the attorney general for 3 months. (see above)
- 8-17-76 Before DOOLING J - case called - deft present - trial resumed - Trial cont'd to 8-18-76.
- 8-18-76 Before DOOLING J - case called - deft present - trial resumed - M. Mensa sworn as witness for the Govt. Govt rests - deft rests - defts motion to strike testimony of Angel Rodriguez reviewed - Denied - defts motion for judgment of acquittal under Rule 29 denied - summations by both sides - Marshals sworn - alt. excused - Jury returns to deliberate - Jury returns with a verdict of guilty - Jury polled - defts motion for judgment of acquittal renewed - defts moves to set aside verdict - both motions denied - bail cont'd - sentence adj'd without date.
- 8-24-76 By Dooling J - Order to show cause filed for modification of sentence imposed (ret. 8-27-76 at 2:00 PM) Witness Livia Butron)
- 8-25-76 Petition for writ of habeas corpus ad prosequendum filed. Writ Issued (Butron)
- 8-27-76 Before DOOLING J - case called - witness Butron & counsel Thomas O'Rourke present - John Contreras sworn as interpreter - deft by counsel withdraws rule 35 motions - deft advised of right to appeal.
- 8-30-76 Voucher for compensation of atty Peter Passalacqua filed
- 9/7/76 Petition for writ of Habeas Corpus Ad Prosequendum returned & filed. - Executed.
- 10-22-76 Before DOOLING J - case called - deft & atty Barry Mallin present - deft is sentenced to imprisonment for 3 yrs plus special parole term of 5 yrs pursuant to 18:4205(b)(2). No finding as to whether deft is deportable can be made in view of the defts deportable status and the nature and circumstances of the offense. Deft granted leave to appeal in forma pauperis Clerk to file notice of appeal forthwith.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

RUBEN DARIO PARRAS

76 CR 280 2

Yr. | Docket No. | Dct.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
	(Document No.)	(a)	(b)	(c)	(d)
10-22-76	Notice of apppal filed (no fee)				
10-22-76	Docket entries and duplicate of notice of appeal mailed to the court of appeals.				
10-26-76	Voucher of Compensation for Expert services - Filed.				
10-28-76	Judgment and Commitment returned from Marshal - Filed. Deft. delivered on 5-18-77 to M.C.C.				
10/28/76	Notice of Appeal filed.				
10/28/76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.				
11-8-76	Order received from Court of Appeals that the record be docketed on or before December 1, 1976 - filed.				
11-29-76	Stenographers transcript filed dated 8-16-76				

12/2 76
L. A. [unclear]

TRP:RA:rt
F.#761,526

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

YOLANDA BOLANOS and
JOHN DOE, also known as
"Roberto",

Defendants.

----- X

THE GRAND JURY CHARGES:

On or about the 9th day of April 1976, within the Eastern District of New York, the defendant YOLANDA BOLANOS and JOHN DOE, also known as "Roberto", did knowingly and intentionally distribute approximately twelve (12) ounces of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a) (1) and Title 18, United States Code, Section 2).

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT ED NY

APR 15 1976

TIME A.M.
P.M. N.D.I.C.T M E N T

Cr. No.
(Title 21, U.S.C., §841(a) (1)
Title 18, U.S.C., §2)

30 CR 220

A TRUE BILL.

S. J. Accolla
FOREMAN.

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

United States of America vs.

United States District Court for

EASTERN DISTRICT OF NEW YORK

DEFENDANT

REUBEN DARRIO PARRAS

DOCKET NO. ➔

76 CR 280

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date ➔

MONTH
10

DAY
22

YEAR
1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Barry Mallin, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

**FINDING &
JUDGMENT**

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C. Sect. 841(a) and T-18, U.S.C. Sect. 2 in that on or about April 9, 1976, the defendant, with another, did knowingly and intentionally distribute approximately 12 ounces of cocaine hydrochloride, a Schedule II narcotic drug controlled substance as charged in count 4 of the indictment;

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General, or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

three (3) years, and to an additional parole term of five (5) years, pursuant to Title 18, United States Code, Section 4205 (b)(2), to become eligible for parole at such time as the Parole Commission may determine. No finding under Title 18, United States Code, Section 4216 can be made in view of the defendant's deportable status and the nature and circumstances of the offense

SPECIAL
CONDITIONS
OF
PROBATION

ADDITIONAL
CONDITIONS
OF
PROBATION

COMMITMENT
RECOMMEN-
DATION

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ OCT 26 1976 ★

TIME A.M. _____
P.M. _____

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

John A. ...
Date 10/26/76

16

G-3A

APRIL 7, 1976

Outgoing Call

10:15 P.M.

A (Detective Rodriguez) to Yolanda

Yolanda: Hello

Rodriguez: Hello, Yolanda

Yolanda: What's up?

Rodriguez: Ah, Did you speak to the man?

Yolanda: Yes. Didn't he call you?

Rodriguez: He didn't call me.

Yolanda: But I gave him the phone. He told me, "Well, I'm going to call him to tell him to call him that... that I'm going to try to arrange everything today.

Rodriguez: Today?

Yolanda: Yes. But if he didn't call you...

Rodriguez: He didn't call me, no.

Yolanda: Ah. What a problem.

Rodriguez: Give me the phone. I'll call him. I just have to ask him if we are going to do something or not.

Yolanda: Yes

Rodriguez: Okay? I'm going to ask him that Because this is too much already. He knows it. This is too much, you see.

Yolanda: Ah

Rodriguez: Okay?

Yolanda: And can't you wait until tomorrow then?

Rodriguez: No, girl, because you know already...

Yolanda: I'm going to go over now personally to the house of...

Rodriguez: Give me... give the phone. I'll call him myself I'll tell him, you know, that I'm with you.

Yolanda: Ah?

Rodriguez: I'll tell him I'm with you.

Yolanda: Yes.

Rodriguez: Okay?

Yolanda: Okay. Wait a moment (Pause) Hello?

Rodriguez: Hm, hm.

Yolanda: But you are going to tell him that you are calling... that you came over here to the house. Okay?

Rodriguez: Aha. Okay

Yolanda: Because maybe suddenly he doesn't like my giving out his phone

Rodriguez: And that you are in the bathroom.

Yolanda: Ha?

Rodriguez: Should I tell him you are in the bathroom? Or should I tell him that you went out to... You went out to... to...

Yolanda: No, no, no, no. You, you tell him and... Oh wait. How should we do everything so that he doesn't ... Why don't you call me. I'm going to...

Rodriguez: You give me the phone. If he doesn't call me, I'll call him tomorrow then.

Yolanda: What did you say?

Rodriguez: You give me the phone. If he doesn't call me I'll call him later. Okay?

Yolanda: Okay,

Rodriguez: Aha

Yolanda: Good. Oh excuse me. What is it you... I should give you the phone?

Rodriguez: You give me his phone. So then if he doesn't call me I'll call him back. If he doesn't call me I'll call him. If he calls me, then I won't call him. But just in case.

Yolanda: Yes, in case he doesn't call you. You'll call him.

Rodriguez: Aha.

Yolanda: Okay. So then you are not going to tell him that you are not... that I'm the one who gave you phone. Okay?

Rodriguez: Aha. Okay

Yolanda: Okay. Write it down.

Rodriguez: Hm hm

Yolanda: Four - seven - eight.

Rodriguez: Hm hm

Yolanda: Twenty eight - fifty one

Rodriguez: Twenty eight - fifty one?

Yolanda: Hm hm

Rodriguez: Do you want me to wait a little longer, or what do you want me to do?

Yolanda: No, well. You know what, what I would like is that, if you want to, well I better go personally over to the house.

Rodriguez: Leave it then. I won't call him up then. Okay.

Yolanda: Yes then I'll... What should I say. Do you want me to call you over there at the house?

Rodriguez: If you go over to the house... Does he live near you?

Yolanda: Yes, he lives near by.

Rodriguez: You go over there to the house and you call one from there. Okay?

Yolanda: Okay. Good I'm going to go...

Rodriguez: I'll be waiting for you call. Okay?

Yolanda: Okay, good, bye.

Rodriguez: Bye, bye.

(English)

Rodriguez: THIS IS APRIL 7, 1976 THE TIME WAS 10:15 P.M.
THAT WAS AN OUTCOMING... OUTGOING PHONE CALL.

Gx 3-B

APRIL 7, 1950

INCOMING CALL

10:10 P.M.

YOLANDA TO DETECTIVE (RODRIGUEZ)

Rodriguez: Hello.

Yolanda: What's up?

Rodriguez: Aha

Yolanda: Aha. Look I came here. I'm right here at this guy's house, right?

Rodriguez: Aha.

Yolanda: You know what's happening is that they didn't come through you know why?

Rodriguez: Hm hm.

Yolanda: Because they've had a problem with the... with the merchandise. Right? It was not very good.

Rodriguez: Hm hm.

Yolanda: It was a little commonplace, you know. Those clothes were very bad. So then what they were trying to do was to... was to get finer clothes. Right?

Rodriguez: Hm.

Yolanda: So now he tells me that then for tomorrow. I'll put him on for a minute and he is going to explain to you. Just a moment. Okay?

Rodriguez: Hm

Yolanda: Just a moment.

Male Voice
[REDACTED]: Hello

Rodriguez: Hello.

Male Voice
[REDACTED]: Eh...

Rodriguez: Who am I speaking to?

Male Voice
[REDACTED]: Hello

Rodriguez: Hello

Male Voice
[REDACTED]: Listen

Rodriguez: Aha

Male Voice
[REDACTED]: Eh... I spoke to this guy. Right? And what's happening is that the good thing didn't arrive, Right? So by tomorrow afternoon I'll be very happy to go through with it.

Rodriguez: Hm hm. What you... what you have today, ah...
What's it like?

Male Voice
 Pardon?

Rodriguez: Don't you have anything today?

Male Voice
: Ugh, ugh.

Rodriguez: No?

Male Voice
: Because it was something too commonplace. You
understand. The clothes were no good.

Rodriguez: Hm hm. And what about tomorrow? Tomorrow then?

Male Voice
: Yes tomorrow by five o'clock in the afternoon.

Rodriguez: Oh that's too late, because I have things...
you see?

Male Voice
 Or earlier.

Rodriguez: I can do it tomorrow at one in the afternoon
would be all right or two o'clock in the
afternoon.

Male Voice
 All right by three o'clock.

Rodriguez: Ha?

Male voice

At three.

Rodriguez: Can you do it at two o'clock in the afternoon?

Male voice

Between two and two thirty is fine.

Rodriguez: Okay?

Male voice

Well then...

Rodriguez: Anyway I'll be at home so have Yolanda call me at home.

Male voice

Okay.

Rodriguez: But by tomorrow for sure by around...

Male voice

Aha

Rodriguez: By... no later than three o'clock.

Male voice

Okay

Rodriguez: And where? At Yolanda's house. Right?

Male voice

Hm hm..

Rodriguez: Okay, but no later than three. Right?

Male voice

I've spoken personally...

Rodriguez: And what's that price?

~~_____~~: That you'll have to discuss with her, Right?
male voice Tomorrow. Did you speak to her over there.

Rodriguez: The same price she gave me?

male voice
~~_____~~: Hm hm.

Rodriguez: Eight - six. Right?

male voice
~~_____~~: Pardon?

Rodriguez: Eight - six?

male voice
~~_____~~: Just a moment. (Pause)

Yolanda: Hello?

Rodriguez: Aha

Yolanda: So then he tells me that yes, between two thirty and three o'clock.

Rodriguez: But for the same price tomorrow?

Yolanda: Yes. The same, yes.

Rodriguez: Aha.

Yolanda: Hm hm.

Rodriguez: Aha

Yolanda: He had already given me that price.

Rodriguez: Oh so you already went to the man's house then.

Yolanda: Oh yes, I'm at his place now, Because he lives close by.

Rodriguez: Ah

Yolanda: Hm hm

Rodriguez: Okay. So I'll be waiting for your call tomorrow at two o'clock then.

Yolanda: So then what do you want? I should call you at home?

Rodriguez: Yes to do it tomorrow at around two o'clock in the afternoon.

Yolanda: At two o'clock in the afternoon.

Rodriguez: We'll do it tomorrow by... by... Let me see...

Yolanda: Because... Would you rather I go... I go to Brooklyn, tomorrow?

Rodriguez: Yes you can come to Brooklyn. You know...

Yolanda: Okay.

Rodriguez: Okay?

Rodriguez: Okay. If it goes later than three o'clock I won't do it.

Yolanda: Okay.

Rodriguez: Okay

Yolanda: No, no, by that time he says for sure.

Rodriguez: Yes but if it goes later than three o'clock I won't do it.

Yolanda: Okay.

Rodriguez: Okay?

Yolanda: Okay

Rodriguez: Okay I'll see you

Yolanda: Bye

(English)

Rodriguez: TODAY IT IS APRIL 7, 1976. THE TIME WAS 10:30 P.M. THAT WAS AN INCOMING PHONE CALL FROM THE FRIEND OF YOLANDA CALDOS.

----- *

1
2 to the beginning of the different phone calls and
3 nothing was said.

4 THE COURT: The part that was played in full,
5 it seemed to me break down into two parts with an inter-
6 val?

7 THE WITNESS: That was a delay for her to give
8 me time to get a pencil to write the connection's
9 telephone number.

10 MR. APPLEBY: May I release the transcripts,
11 Your Honor?

12 THE COURT: All right.

13 BY MR. APPLEBY:

14 Q Now, Detective Rodriguez, this call we just heard
15 was at 10:15 p.m. on April 7th; is that right?

16 A Yes.

17 Q Did you talk to Yolanda again that night?

18 A Yes, I did.

19 Q Would you tell us when that occurred?

20 A About 10:30 I received a phone call from Mrs.
21 Belanos. She told me she was at the connection's house and
22 that she would put the connection on to speak with me. At
23 this time, a person came on; a male voice came on the phone,
24 and we began talking. I asked him when I was going to get
25 the package. He told me that the close wasn't good enough

1
2 but that he would get me better clothes or better quality on
3 the next day; the next following day.

4 Q You are familiar with the terminology that nar-
5 cotics' dealers use; is that correct?

6 A Yes.

7 Q Would you please explain to the Jury the code used
8 by narcotics' dealers?

9 A One shirt, as for instance --

10 Q Do narcotics' dealers, when talking on the tele-
11 phone, talk explicitly about the word cocaine?

12 A No, they don't.

13 Q Will you tell us how they talk?

14 A They mostly call it clothes, shirts; anything else
15 but cocaine. Shirts and clothes is commonly used. In other
16 words, just in case somebody is tapping the phone, they won't
17 know what they are talking about.

18 At this particular place, the word used was clothes,
19 which meant cocaine.

20 MR. MALLIN: Objection to that, Your Honor.

21 THE COURT: If it is in light of the witness's
22 earlier testimony, he is competent to testify to the use
23 of such words as testified. He testified that he oper-
24 ated under cover for how long, Mr. Rodriguez?

25 THE WITNESS: Clothes or --

1

2

THE COURT: How long have you operated under-
cover?

3

4

THE WITNESS: Five years.

5

6

7

8

MR. MALLIN: My point is there might be a
change in the use of the word of clothes, but he can't
tell us in that particular instance that that's what it
meant.

9

10

11

THE COURT: That is for you to say whether
that word was used on this occasion was used by the male
voice as meaning cocaine.

12

13

14

15

16

17

THE WITNESS: I then told the male voice that
if the price was 86, meaning \$800 and \$600 dollars.
He said you have to speak to Yolanda about that. He
then put Yolanda back on the phone. He also told me
that the deal was either going to take place, either the
following day, which is the tape conversation --

18

Q This recorded conversation was taped?

19

A Yes, it was.

20

Q How was it taped?

21

A The same as the other one with the suction cup
with a wire leading into a recorder.

22

23

24

25

Q As I understand your testimony, Detective Rodriguez,
you first spoke to Yolanda and then she put on a male and
then Yolanda got back on the phone?

1
2 A She told me she was putting the guy on the phone
3 and she put Mr. Rueben Parras --

4 MR. MALLIN: Objection, Your Honor.

5 THE COURT: He is testifying as to what was
6 said to him.

7 MR. MALLIN: He just mentioned a name, but
8 there was no name or foundation laid.

9 THE COURT: Whether he used it, she used it or
10 not, you identify it as a male voice?

11 THE WITNESS: Yes, it was.

12 Q I show you Government's Exhibit 3 in evidence and
13 ask you whether you recognize the tape recording of the con-
14 versation of 10:30 p.m. as being the one in evidence?

15 A Yes, it is.

16 Q How do you know that that conversation is on
17 Government's Exhibit 3?

18 A Because I recorded this tape myself and wrote the
19 date on it myself.

20 MR. MALLIN: Your Honor, I would make the same
21 objection as to this conversation as to all parties in
22 this conversation as well as what I made prior thereto.

23 THE COURT: Again, this is the same as the
24 other telephone conversations I spoke to you about. All
25 Mr. Rodriguez can tell you is that he heard these voices

1
2 and he produces them in Spanish on the cassette for you
3 to hear. Whether these voices were telling him the
4 truth, whether it was Yolanda Belanos that called him
5 on this next tape or the last one, all these things are
6 things which you must decide, but again, what Mr. Mallin
7 wants, particularly drawn to your attention, is that
8 one of this has been connected with the defendant at
9 all at this point.

10 Proceed.

11 Q Detective Rodriguez, did Yolanda Belanos by name or
12 other wise her connection?

13 A Yes.

14 Q Will you tell us what that name was?

15 A Roberto.

16 MR. APPLEBY: I would ask that this transcript
17 be marked as the next Government's Exhibit for identi-
18 fication.

19 THE CLERK: So marked, Government's Exhibit
20 3B for identification.

21 Q Detective, I show you Government's Exhibit 3B for
22 identification and ask you whether you recognize it?

23 A Yes, I do.

24 Q What do you recognize it to be?

25 A This is a transcript from a conversation dated

1
2 April 7th, 1976, at 10:00 p.m., between me, Yolanda and a
3 male voice.

4 Q Now, have you compared the translations of Govern-
5 ment's Exhibit 3B for identification with the actual tape
6 that is on Government's Exhibit 3 in evidence?

7 A Yes, I did.

8 Q And is it a fair and accurate translation of the
9 tape recording?

10 A Yes, it is.

11 MR. APPLEBY: Your Honor, I offer Government's
12 Exhibit 3B for identification into evidence.

13 Could we have a side bar for a moment?

14 THE COURT: Yes.

15 (Thereby a side bar discussion was commenced.)

16 MR. APPLEBY: Your Honor, in view of the fact
17 that Yolanda Belanos identified her connection as
18 Roberto and in view of the fact that Yolanda Belanos
19 said that she is now at her connection's house, I don't
20 think it's unfair for the Government to put the name
21 Roberto down.

22 THE COURT: She could be lying to him when she
23 said that. She could have said my name is Roberto and
24 then gone to someone else. Make believe you are Roberto
25 and we can really rip this guy off for \$600. We will

1
2 Q Detective Rodriguez, this telephone conversation
3 was on April 7th. Did you talk to Yolanda Belanos on April
4 8, 1976?

5 A Yes, I did.

6 Q Will you tell us what happened on that date?

7 A Miss Belanos told me that everything was set, that
8 I was to meet her. We made arrangements to meet at about
9 3 o'clock at Julia's Restaurant, outside on the corner of
10 Dekalb Avenue in Flatbush.

11 MR. MALLIN: As to any conversations on April
12 8th, I make the same objection as before.

13 THE COURT: And again, the point is that none
14 of this has, in any way, been connected with the defen-
15 dant. We are interested only, at this point, in what
16 words Mr. Rodriguez could tell us he heard and what
17 action he took in consequence of those words.

18 Q Continue, please.

19 A She told me that everything was set, that she was
20 waiting for the connection to give her the package, that she
21 would meet me at 3 o'clock at the corner of Dekalb Avenue in
22 Flatbush, Brooklyn, with the package.

23 Q Continue, please.

24 A On April 8th, at about 3 o'clock, I went to the
25 corner of Dekalb Avenue and Flatbush Avenue and waited approx-

imately an hour and a half. Miss Belanos didn't appear.

On the night of April 8, 1976, I called Miss Belanos and asked her what had happened. She advised me that her connection was unable at that time to do the deal but that the deal would be done.

Q Continue, please.

A She also stated that she would call me as soon as she knew when it was going to happen and that she was going to have a quarter of a kilogram of cocaine for me and that the price was still \$8,600. I told her I would wait for a phone call on April 9th. She also told me that her connection, she was mad at her connection for being so irresponsible, for making me wait in the street for that length of time. She was very apologizing for making me wait.

Q Continue, please.

A On the same day?

Q What happened next with Yolanda Belanos?

A On April 9th, Miss Belanos called me up and told me she would have not only eight ounces of cocaine, but rather 12 ounces of cocaine for me and that everything --

MR. MALLIN: Your Honor, on any conversations on April 9th, I make the same objection.

THE COURT: Yes. Again, this is the same objection as before and none of this has been connected

1
2 to Mr. Parras and that we have no direct evidence of
3 whether Miss Belanos was telling the truth or was lying.
4 We just know what she said to Mr. Rodriguez and what
5 action he took in consequence of what she said.

6 Q Continue, please.

7 A I told her that I was interested. She told me
8 that she was going to have three-quarters -- I'm sorry,
9 three-eighths, which is 12 ounces of cocaine, and that she
10 wanted \$13,000 -- I believe \$13,200. I'm not sure what the
11 price was, and that she would meet me at the corner of the
12 Burger King Restaurant in Queens. I agreed to meet her
13 there and I would purchase the cocaine.

14 At about 4:50 p.m., Detective Petraglia and myself
15 parked at the parking lot of Burger King and at 50th Street
16 and Northern Boulevard. Five minutes later I saw Miss Yolanda
17 Belanos inside the restaurant. I greeted her. I asked her
18 if she had the cocaine with her and she said she did.

19 I told her, let's go to the car, and we will do the
20 deal inside the car. Miss Yolanda Belanos walked with me to
21 the car. I opened the door for her. She sat in the rear
22 seat of the vehicle with Detective Petraglia.

23 I asked Miss Belanos to see the package. Miss
24 Belanos opened up a carrying bag; inside this carrying bag,
25 she reached into and brought out another paper bag which con-
tained three different bundles of three different packages of

1 cocaine. I looked at it. She handed it to Detective
2 Petraglia.
3

4 I asked her if I could get more during that night;
5 if I could go out and get more later on; if there was any
6 more where this cocaine came from. She told me that she
7 didn't know. I asked her if we could buy more later on and
8 she said she would have to speak to her connection.

9 I asked her if the connection, the man that I
10 spoke to on the phone, sent this, and she said that he did.
11 I asked if the man I had spoken to on the phone sent this
12 package, and she said he did. I also asked her to remain in
13 the car.

14 I was going to the trunk of the vehicle to get the
15 money. At this time, I opened the trunk of the vehicle,
16 Miss Belanos was arrested. Now, --

17 Q Did you take her down to the Drug Enforcement
18 Administration at this time?

19 A Yes, I did.

20 MR. APPLEBY: I ask that this be marked as
21 the next Government's Exhibit for identification.

22 THE CLERK: So marked Government's Exhibit 4
23 for identification.

24 MR. APPLEBY: I show Government's Exhibit 4
25 for identification to Mr. Mallin.

1
2 is one member of the Jury that does understand some
3 Spanish. I think if it does enter, he will hear the
4 prejudicial matter, and I would object to it.

5 THE COURT: As I understand it, are we going
6 to see a transcript of it?

7 MR. APPLEBY: No transcript.

8 THE COURT: It is going to be --

9 MR. APPLEBY: Solely for comparison purposes.

10 THE COURT: Okay. The objection is overruled.

11 BY MR. APPLEBY:

12 Q Mr. Rodriguez, I'd like to direct your attention
13 now to May 17, 1976. Were you in communication with Frank
14 Berberich?

15 A The officer sitting in the green sport jacket.

16 Q He is the case agent in this case?

17 A Yes.

18 Q And you had a telephone conversation with him at
19 that time; is that correct?

20 A Yes, I did.

21 Q Will you tell us the circumstances under which
22 that telephone conversation took place?

23 A I was sitting at the office, and I received a phone
24 call from Police Officer Frank Berberich. He told me to --

25 MR. MALLIN: I object to what he was told and

any other conversations on the basis of hearsay.

THE COURT: Again, this is not before you for the truth of the words that Mr. Rodriguez heard on the telephone, but, again, simply for the words themselves, true or false, and for what, if any, action they led to.

Q Continue, please.

A He asked me to interview a person on the phone. I recorded the conversation.

Q Where was Agent Berberich calling from?

A Agent Berberich told me he was calling from the 108 Precinct in Queens.

Q Did he tell you what he was doing?

A Yes, he told me that he had a person there. He was there with a person who we believed to be Roberto and he wanted me to see if I recognized his voice.

Q Then what happened?

A Then I spoke to -- I took the phone. I spoke to Mr. Roberto --

THE COURT: Spoke to a male voice.

A A male voice, and I immediately discovered that that male voice was the same voice that I had spoken to on April 9th and April 7th at 10:30 p.m. The same voice that I had talked to; that Yolanda Belanos introduced me to as her connection.

1
2 Q Was there any doubt about that at that time?

3 A No doubt whatsoever.

4 Q And, you said that you recorded this conversation?

5 A Yes, I did.

6 Q After recording this conversation, did you listen
7 to the two tapes, that is the tape of April 7th at 10:30,
8 which you talked to a male voice, and the same tape that you
9 had just recorded that day; May 17th?

10 A Yes, I did.

11 Q And what conclusion did you draw?

12 A The conclusion was that it was the same voice.

13 MR. APPLEBY: I would ask that this cassette
14 be marked as the next exhibit for identification.

15 THE CLERK: So marked Government's Exhibit 6
16 for identification.

17 Q Detective Rodriguez, I show you Government's
18 Exhibit 6 for identification, and ask you whether you recog-
19 nize it?

20 A Yes, I do.

21 Q What do you recognize it to be?

22 A This is a tape cassette conversation between myself,
23 and at this time, Rueben Parras, Daniel Sanchez, also known
24 as Roberto. This conversation was made on May 17, 1976, at
25 about -- after 5:00 p.m.

determine in light of all the evidence, including Mr. Rodriguez's testimony on that point.

MR. APPLEBY: Thank you, Your Honor.

(Thereby a tape recording was played.)

BY MR. APPLEBY:

Q Detective Rodriguez, did there come a time when you met in person the person that you just talked to on the phone on May 17th, over the phone?

A Yes, I did.

Q Where did you meet this individual?

A At the fingerprint room of 201 Varrick (phonetic) Street, at the D.E.A. offices.

Q And at that time, he was being processed?

A Yes, his pedigree was taken down by me.

Q Do you recognize the person in the courtroom that you saw at the D.E.A. headquarters?

A Yes, I do.

Q Would you point him out, please?

A He is the man wearing the colorful shirt between the interpreter and the attorney.

MR. APPLEBY: Indicating the defendant, Rueben Dario Parras, Your Honor.

THE COURT: Yes.

Q Now, did there come a time when you interviewed the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

defendant?

A Yes, I did.

Q Prior to interviewing the defendant, did you do anything?

A Yes, I advised him of his constitutional rights. I read it to him from the card.

Q Do you have that card with you?

A We have one similar to it.

MR. APPLEBY: I would ask that this card be marked as the next exhibit for identification.

THE CLERK: So marked, Government's Exhibit 7 for identification.

Q Detective, I show you Government's Exhibit 7 for identification and ask you whether you recognize it?

A Yes, I do.

Q What do you recognize it to be?

A This is a form DEA-13B which is a Miranda Card.

Q Did you read the contents of that card to the defendant on May 17th?

A Yes, I did.

Q Not from this exact card, but one exactly like it?

A Yes.

MR. APPLEBY: I offer Government's Exhibit 7 in evidence.

1
2 MR. MALLIN: We will concede that he was read
3 those rights. That is not an issue at this time.

4 THE COURT: That he was read and understood
5 his rights?

6 MR. MALLIN: Yes, that is not an issue in this
7 case.

8 Q After being given his Miranda Rights and he indi-
9 cated that he understood those rights, what did the defendant
10 tell you and what questions did you ask him? Just relate the
11 interview as best you can.

12 A I asked him for his name. He told me what his name
13 was, and I asked him where he lived.

14 Q Do you recall what name he gave you?

15 A Yes, I have to look it up in my report there. I
16 believe the name was Gomez. He gave me the name Arturo
17 Gomez, I believe it was.

18 Q Continue, please.

19 A I asked him where he lived. He told me he didn't
20 have an address. I asked him where he was staying, and he
21 didn't answer that question. I asked him where he was from,
22 and he told me he was from Argen -- Brazil. I asked him again,
23 and he told me he was from Columbia.

24 I asked him for his address, and again he told me
25 he didn't have an address. I asked him what kind of an education

1 he had had, and he told me he went to school in Columbia.

2 I asked him if he was sure his name was Arturo Gomez, and he
3 assured me his name was Arturo Gomez.

4 I also asked him if he was a citizen, and he told
5 me he was.

6 Q Did you ask him what his occupation was?

7 A I asked for his occupation, and he told me he wasn't
8 working.

9 Q Did he say anything about his family?

10 A He told me his mother and father, also by the name
11 of Gomez, lived in Columbia, South America.

12 Q Now, you interviewed him for approximately how long?

13 A About 15 or 20 minutes.

14 Q Incidentally, did you ask him if he knew Yolanda
15 Belanos?

16 A Yes, I did.

17 Q What did he say?

18 A He said no.

19 Q You said that you interviewed him for how long?

20 A I interviewed him by myself around 15, 20 minutes.

21 Q And, again, as you were interviewing him, did you
22 compare, in your own mind, the man that you talked to --

23 MR. MALLIN: Objection to that, Your Honor.

24 THE COURT: On what grounds?
25

1
2 MR. MALLIN: It's leading and suggestive, Your
3 Honor. I don't see how he can direct the witness's
4 attention to a topic or not.

5 Q All right, did you make any comparison of voices,
6 again?

7 A First of all, I told him that I was the man who he
8 had spoken to on the phone with Yolanda. I asked him if he
9 wanted to cooperate with us and give us information. I
10 asked him who his connection was, and he told me I don't know
11 what you are talking about.

12 Q I am talking about the -- do you recall the April
13 7th conversation that you had when you were talking to
14 Yolanda Belanos and you talked to a male?

15 A Yes.

16 Q As you were talking to the defendant, did you com-
17 pare it against the voice as you were listening to him with
18 that?

19 A Yes, I did. Immediately after I began talking to
20 him.

21 Q What conclusion did you come to?

22 A I came to the conclusion that Rueben Parras and
23 Roberto was the same person.

24 Q Any doubt about it?

25 A No doubt whatever.

1
2 MR. APPLEBY: May I have one moment, Your
3 Honor?

4 THE COURT: Yes.

5 MR. APPLEBY: No further questions, Your Honor.

6 MR. MALLIN: Your Honor, may I have a side bar?

7 THE COURT: Yes, surely.

8 (Thereby a side bar discussion was commenced.)

9 MR. MALLIN: Your Honor, at this time, now
10 that the witness has concluded that Roberto is the
11 defendant, Rueben Dario Parras, I would move to strike
12 all the hearsay evidence that he has given; any state-
13 ments made by Yolanda or any statements made by Yolanda
14 stating what Roberto might have told Yolanda. I think
15 it's impermissible hearsay, and certainly would deny
16 the defendant a fair trial, if that hearsay is permitted
17 to remain in the trial.

18 MR. APPLEBY: I don't understand the objection.

19 THE COURT: Oh, sure. There is no conspiracy,
20 for example.

21 MR. APPLEBY: I think conspiracy is proved if
22 believed by the Jury, by the identification of the voice.
23 He is connected up with the April 7th conversation with
24 the defense sitting in this courtroom. If the Jury be-
25 lieves that, all the other evidence is admissible.

1
2 MR. MALLIN: This must be proved that there
3 was a conspiracy here before we permit Yolanda's evidence
4 to come in. His whole case is based on what Yolanda
5 has told him. There is no indication that he has given
6 any evidence that this so called Roberto was involved
7 in this April 7th transaction. I heard nothing in it
8 except what was taken on it of Yolanda. He has no evi-
9 dence, aside from Yolanda, that he was involved in the
10 April 9th transaction.

11 THE COURT: The evidence, if any, to connect
12 him with the transaction is Mr. Rodriguez's testimony
13 that the man whom he talked to on the second telephone
14 call on April 7th was the man whom he saw face to face
15 at 201 Varrick Street on May 17th and was the defendant
16 and from that, the Jury is asked to infer that he was
17 the source of the cocaine which she delivered in an
18 alleged pursuit of that telephone conversation.

19 MR. MALLIN: That's a big jump for the Jury.

20 THE COURT: There are lots of big jumps.
21 Whether it's legally sufficient to get to the Jury be-
22 cause there are so many slips between a cup and the lamp.

23 MR. APPLEBY: I think the April 7th conversa-
24 tion between Yolanda, the Detective and Roberto and the
25 Detective, a sort of three-way conversation, was talking

1
2 about the forthcoming narcotic transaction.

3 MR. MALLIN: That was April 8th.

4 MR. APPLEBY: The only reason it didn't occur
5 on April 8th, was they didn't show up.

6 THE COURT: He said to Mr. Rodriguez, and for
7 all we know, this is Mr. Mallin's point, there is no
8 April 8th, for we know the April 8th transaction, he
9 pulled out and she had to get it from another source.

10 MR. APPLEBY: All he said, the Detective, was
11 that her connection was late, and he was irresponsible.

12 MR. MALLIN: That's what she says.

13 MR. APPLEBY: That's an argument he can make.

14 THE COURT: The question is whether there was
15 enough there so the Jury can find reason to find him
16 guilty beyond a reasonable doubt. I think we better go
17 to lunch now so I can go over the transcript of it.

18 MR. APPLEBY: The Government's side is not
19 finished yet, any way.

20 THE COURT: He has made his motion to strike
21 out.

22 MR. APPLEBY: I think it's premature.

23 THE COURT: If you want, I will --

24 MR. MALLIN: I have to cross-examine him and
25 it depends whether his testimony is stricken or not.

1
2 THE COURT: Your cross-examination may directly
3 support the motion to strike.

4 MR. MALLIN: Whatever Your Honor decides.

5 THE COURT: Over your objection?

6 MR. MALLIN: Not always.

7 THE COURT: Do you want to start your cross
8 now or go to lunch? We will be back at a quarter to
9 two. I will reserve until counsel says we have heard
10 the whole case.

11 MR. MALLIN: My problem is that the Jury has
12 heard so much and the case is so prejudiced --

13 THE COURT: It isn't prejudiced. I think it's
14 very easy for you to point out the weakness underlined
15 by your cross-examination. I don't think that Mr. Apple-
16 by is here to tell you, this is the longest case he
17 has ever presented in Court.

18 MR. MALLIN: I understand that. All right,
19 thank you.

20 (Thereby the side bar discussion was terminated.)

21 THE COURT: We will recess now for lunch until
22 a quarter of two. Please, do not discuss the case with
23 one another or anyone not on the Jury until you are
24 scheduled to decide it.

25 THE CLERK: Please, rise.

(Thereby a luncheon recess was taken at 1:45 p.m.)

Cable signed
Reuben Parias
8/17/76

001

Cross/Mallin/ Rodriquez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: We will be starting Cross examination by Mr. Mallin. The Plaintiff's attorney is Richard Appleby and the Defendant's attorney is Barry Mallin. The witness on the stand is Detective Rodriquez.

MR. APPLEBY: Your Honor, just to make-- indicate at that time the net weight was 85.47 grams. I know it's actually 370.02 grams. I took the sample.

CROSS EXAMINATION

BY MR. MALLIN:

Q Now, Mr. Rodriquez, you testified this morning as to two conversations that were held on April 7, these were the tape conversations that we heard this morning; is that correct?

A That's correct.

Q And in the conversation that you had, the transactions that you were negotiating at that point, that was taking place on April 8; was it not?

A That's correct.

Q And what amount of cocaine was involved in that transaction?

A In that particular transaction the amount was eight ounces.

1

2 Q And what was the price that was to be paid
for that cocaine?

4

A1 Eight Thousand Six Hundred Dollars.

5

Q And when you spoke to Yolanda Bolanos on
6 the second conversation on April 7, that was at ten thirty
7 p.m.; is that correct?

8

A That's correct.

9

Q And in the first conversation at ten thirty
10 p.m. she gave you a telephone number; is that correct?

11

A That's correct.

12

Q Which allegedly was the telephone number of
13 this connection?

14

A That's correct.

15

Q And the second conversation at ten thirty p.m.
16 that was a conversation which she called you; isn't
17 that correct?

18

A That's correct.

19

Q And did you trace that call?

20

A Did we trace the call?

21

Q Yes.

22

A No.

23

Q So, you don't know for a fact where that
24 telephone call came from?

25

A That's correct.

1

2 Q And in that telephone conversation you spoke
3 to a male voice; is that correct?

4 A That's correct.

5 Q And the negotiations that you were speaking
6 about involved negotiations for April 8; did that not?

7 A That's correct.

8 Q Those were negotiations to take place in
9 Brooklyn?

10 A That's correct.

11 Q And at Junior's (Phonetic); is that correct?

12 A Correct.

13 Q You were suppose to meet Yolanda at Junior's?

14 A Correct.

15 Q To transact the sale; is that correct?

16 A Yes.

17 Q And did you in fact go to Junior's on April 8?

18 A Yes, I did.

19 Q And was a sale consummated at that time?

20 A No, it wasn't.

21 Q Did you speak to any male voice on April 7
22 rather 8 over the telephone?

23 A No.

24 Q Did you speak to any male voice on April 8
25 over the telephone?

1

2 A No.

3 Q And what was the quantity of cocaine that
4 was actually seized on April 8 from Yolanda Bolanos?

5 A Possibly twelve ounces of cocaine.

6 Q And what was the price that you were pre-
7 pared to pay for that cocaine?8 A The price prepared to pay for the cocaine
9 was-- she told me one third more of what the original
10 price was which was Eight Thousand Six Hundred and another
11 additional Four Thousand Three Hundred.12 Q1 In the vicinity of Twelve or Thirteen Thousand
13 Dollars?

14 A Correct.

15 Q And did you actually pass the money to her on
16 April 9?

17 A No, I didn't.

18 Q In fact the sale wasnot consummated on April
19 9 either? She was seized-- she was arrested and narcotics
20 seized prior to the passage of any money?21 A The attempted sale was seized, the
22 attempted sale.

23 Q She never had this money in her possession?

24 A No, she didn't.

25 Q And this woman, Yolanda Bolanos, she was not

000

1

2 a registered agent at that time; was she?

3

A No.

4

Q You had never received any information on
5 any prior occasion?

6

A Information?

7

Q As an agent, as a registered agent?

8

A As an agent, no.

9

Q And do you know for a fact, from your own
10 personal knowledge, where she obtained the cocaine that
11 was seized on April 9?

12

A Well, she told me--

13

Q Not what she told you.

14

MR. APPLEBY: I'm going to ask that
15 this witness be allowed to answer that question.

16

THE COURT: Overruled. Answer that
17 responsively as counsel insists.

18

Q As to your own knowledge do you know where
19 she obtained those narcotics?

20

A Well, I can't answer that question
21 because I was to go by what she said to me.

22

Q Only by what she told you?

23

A Right.

24

Q You have no independent knowledge as to where
25 she may have obtained those narcotics?

000

1

2

A Not at that particular time.

3

Q Well, we are talking about the sale of April
4 9 that is what the charge is; is it not?

5

A Right.

6

Q Did you ever see Mr. Parras in possession of
7 narcotics that was seized on April 9?

8

A No.

9

Q Did you have any communication with Mr. Parras
10 as to a transaction which was to take place on April 9?

11

A Not April 9.

12

Q Did you have any conversation with the so-
13 called Roberto as to any sale that was to take place on
14 April 9?

15

A No, not April 9.

16

Q Isn't it a fact that it wasn't until after
17 she was arrested that was the first time you heard the
18 name Roberto?

19

A That's not true.

20

Q She gave you that name before she was arrested?

21

A Theree was a phone conversation that
22 came to my house that she advised me that that person,
23 the guy I spoke to was Roberto.

24

Q When was that conversation?

25

A I believe it was the very early morning

1

2 of April 8th at my house.

3

Q Do we have a transcript of that conversation?

4

A No that was my own home number.

5

Q That was not recorded?

6

A No.

7

Q We don't have a transcript of it?

8

A No.

9

Q Did you make notes and memoranda pertaining
10 to this conversation ?

11

A Yes, I do.

12

Q I'll give you time to look at any notes that
13 may. Can you tell us where in your notes and memorandum,
14 withdrawn. In your notes and memorandum pertaining
15 to this case I assume you put down all the pertinent
16 information relating to this matter?

17

A As a matter of fact, now that I remem-
18 ber, after she gave me the name Roberto we were looking,
19 we checked her out with the telephone company. We were
20 looking for the phone number of Roberto. We were
21 surprised to find out that it was registered. I put it to
22 the attention of Police Officer Berberich.

23

MR. APPLEBY: I'm going to ask that

24

he be allowed to answer.

25

THE COURT: What was the question.

1

2 (The reporter reads back the last question. '

3 A I don't recollect putting it down.

4 Q Is there any where in your notes and memorandum
5 that you indicated that you knew the name Roberto before
6 Yolanda Bolanos was arrested?

7 A I would have to review my notes.

8 Q1 Can you please do so.

9 (The witness is looking through his notes)

10 A No, I don't see the name Roberto at
11 this time in my reports. This is only one report that I
12 have.

13 Q Do you wish to look at any other reports?

14 A No, I don't. I don't think that-- I
15 don't remember putting it down on the reports. I do
16 recollect that we checked in the Telephone Company to
17 find out if there was a Roberto that the telephone number
18 was for. I recall telling Officer Berberich that Roberto--
19 I do recollect that we tried to see but we were suprised
20 when we found out that it wasn't.21 Q There's nothing about that in your notes/
22 is that correct?

23 A No, there's not.

24 Q Did you testify before the Grand Jury in this
25 case on April 15th?

1

2 A I can't say anyone. This is a very good
3 tape recorder.

4 Q The cassette itself that you were using, the
5 tape, did that have any special characteristic?

6 A A regular cassette tape.

7 Q I see. When you heard the voice of this man
8 on April 7, so called Roberto, you didn't know his
9 identify at this time; did you?

10 A At that time?

11 Q Yes.

12 A No, we didn't know who he was. We knew
13 he was Roberto. We didn't know who Roberto was at that
14 time.

15 Q Before April 7th you knew this man to be
16 Roberto?

17 A I -- I believe I did. I can't correctly
18 answer that question. I think I did because as soon as
19 I got the phone number back we checked it out. We said,
20 "Let's check the telephone number to see if it comes to
21 be Roberto." I remember that just as I'm talking now
22 with you. I told Detective Berberich the guy we want is
23 a guy named Roberto.

24 Q And in that telephone conversation was that
25 person identified by name?

1

2 A No, not in that telephone conversation.

3 Q In any of the telephone conversation between
4 yourself and Yolanda was her connection identified by
5 name?

6 A I don't believe so.

7 Q And as a matter of fact you recall asking
8 her in later conversations what is the name of this
9 person?

10 A I would have to look at the transcript.

11 Q May I have one moment, your Honor. First of
12 all, you recall in the conversation on April 7th the
13 one at ten thirty p.m. where you spoke to this male, you
14 recall asking him questions, "Who am I speaking to?"

15 A Yes, I do.

16 Q And alright. Then do you recall a conver-
17 sation on April 8, 1974, at seven ten p.m., I'm referring
18 to People's 3509 transcript, do you recall the conver-
19 sation of which you called Yolanda Bolanos at seven ten
20 p.m. and stated to her, who was that that phoned you, what
21 is the name of the guy, the one I spoke to, who is he;
22 do you recall making that statement to her?

23 A Yes, I do.

24 Q And you are still telling us that you were
25 aware that the man was Roberto prior to April 7?

1

2 A Yes, I am. Not only that, now I
3 recollect my memory another defendant in this case
4 Frank Ginola(Phonetic).

5

 MR. MALLIN: Your Honor I object
6 to anything that somebody else may have told him.

7

 THE COURT: Just answer precisely
8 the question counsel asks, if you will, Mr. Rodriguez

9

 A Yes.

10

 Q At any rate, Mr. Rdoriguez, you didn't know
11 the identify of Roberto at that point?

12

 A No, we didn't know who he was.

13

 Q And your conversation with him on April 7
14 was with the person you had never spoken to before, at
15 least that you hadn't known that you had spoken to before;
16 is that correct?

17

 A That's correct.

18

 Q As far as you know at that time he was an
19 unknown voice?

20

 A That's correct.

21

 Q Have you ever been qualified as an expert
22 in voice identification?

23

 A No, I haven't.

24

 Q Do you have any special degree or training
25 in voice identification?

1

2 in the identification in the Courtroom?

3 A No, I was never asked to be, no.

4 Q And in making this identification you were
5 not given the benefit of any scientific analysis; were you?

6 A No, I wasn't.

7 Q There was no voice prints made of those
8 voices?

9 A No.

10 Q Those voices were not funneled into any kind
11 of machine to analyze the difference or similarity; were
12 they?

13 A No.

14 Q The voice you heard on April 7, would you
15 agree that the man spoke in a low tone, in almost a
16 whisper?

17 A Well, on once or twice occasions he did.

18 Q Would you agree that he spoke in a lower
19 volume than Yolanda spoke to you?

20 A I would agree, yes.

21 Q And would you agree that he was making an
22 attempt or he appeared to be making an attempt to disguise
23 his voice?

24 A I don't agree with that, no.

25 Q Would you like to listen to the tape before

070

1

2 answering the question?

3

A I listened to it many times.

4

Q You would agree he spoke in a low tone?

5

A Yes.

6

Q And Do you know how long your conversation
7 with him transpired on April 7th?

8

A Aaround thirty seconds.

9

Q About half that time you were speaking; is
10 that right?

11

A Yes, I was.

12

Q So then you heard his voice for approximately
13 fifteen seconds?

14

A Approximately, yes.

15

Q And this voice was coming over a telephone;
16 is that right?

17

A That's correct.

18

Q Then the voice was coming into a tape machine
19 being transcribed in the Sony Tape Recorder, is that
20 correct?

21

A That's correct.

22

Q And when you next spoke to this man whom
23 you claim to be Roberto was some six weeks later; is that
24 correct?

25

A That's correct.

070

1

2 Q And when you spoke over the telephone at
3 that time, at that time you spoke to Mr. Parras was there
4 any attempt by Mr. Parras to disguise his voice; that
5 you could tell?

6 A No, I don't think so.

7 Q Was he speaking in a normal tone of voice?

8 A He was nervous.

9 Q Normal volume or normal--

10 A Just about maybe a little bit higher.
11 He was no doubt the same person I spoke to on the phone.

12 Q You are saying that but that's not my question.
13 And for how long did you talk to him at that time?

14 A About more than two minutes, I believe.

15 Q But the first time you told us that your
16 conversation, at least you heard his voice approximately
17 fifteen seconds; is that correct?

18 A That was possible. We have the tape
19 right here we can listen to it and find out the time.

20 Q I think you answered that. Now, when you
21 spoke to Mr. Parras on that occasion that is now at
22 the time of his arrest, did you identify yourself to
23 him?

24 A The first time I did. I came in and
25 I had my shield in my lapel. I read him his rights.

1

2 Q I'm talking about the telephone conversation.

3 A The telephone conversation, yes.

4 Q How did you identify yourself?

5 A Well, first of all after reading him his
6 rights.

7 Q You did it over the telephone?

8 A You mean on the telephone conversation?

9 Q I'm referring to the telephone conversation.

10 A No, I didn't identify I just asked him
11 some questions.

12 Q And he gave you certain answers; is that
13 correct?

14 A Yes, he did.

15 Q Then you questioned him in person. When was
16 that?

17 A That was about an hour and a half later,
18 I believe.

19 Q You asked him several questions about his
20 name and address; is that correct?

21 A That's correct.

22 Q And he gave you certain answers?

23 A That's correct.

24 Q You were aware of the fact that Mr. Parras
25 was an illegal alien.

1

2 A At that time?

3 Q Yes.

4 A Well, I was aware of the fact that,
5 yes, because he had told me on the phone on the same
6 conversation before.

7 Q As a matter of fact immigration authorities
8 were notified; were they not?

9 A That's another witness I can't testify.
10 I didn't call immigration.

11 Q Do you know if somebody else called immigra-
12 tion?

13 A I think they did I can't speak for
14 somebody else.

15 Q Isn't it a fact Mr. Rodriguez that Mr. Parras
16 told you at some point that he gave you a name different
17 from his because he thought you were from the immigra-
18 tion authority?

19 MR. APPLEBY: Objection.

20 THE COURT: Overruled.

21 A That's ridiculous.

22 Q Just say-- I'm asking you if it's a fact
23 whether he told you this; just answer yes or no?

24 A No, it's not.

25 Q You're telling us he never told you this?

1

2 A He never. I had the shield it says
3 Police Department on my lapel. I advised him of his rights.
4 I toldhim what he was charged with.

5 Q And did he admit any connection with the
6 sale on April 9th?

7 MR. APPLEBY: Your Honor, objection
8 as hearsay.

9 THE COURT: Overruled.

10 A No, he didn't. He--

11 Q Just answer the question.

12 A No.

13 Q And all the arrangements for the April 9th
14 transaction were done between you and Bolanos/ is that
15 correct?

16 A That's correct.

17 Q And were narcotics ever seized from the
18 possession of Mr. Parras at any time?

19 A No.

20 MR. MALLIN: I have no further
21 questions.

22 MR. APPLEBY: I have a few, your
23 Honor.

24 RE DIRECT EXAMINATION

25 BY MR. APPLEBY:

1

2 Q Detective Rodriquez, Mr. Mallin asked you
3 questions other than the conversations with Yolanda Bolanos
4 how did you know who the supplier was? Would you tell me
5 again what the conversation was with Yolanda Bolanos
6 on April 9th at the Burger King Restaurant concerning
7 her supplier?

8 MR. MALLIN: Your Honob I object
9 to that on the basis of Hearsay. We have had that
10 already. It's improper.

11 THE COURT: It's for the point of
12 showing the identity of the supplier? It is
13 hearsay. It was overruled for the truth of the
14 matter. The objection must there fore be at least
15 sustained.

16 MR. APPLEBY: Your Honor, I'm
17 addressing myself to the discussion at the side
18 bar.

19 (All attornies approach the side bar.)

20 MR. APPLEBY: This is a statement
21 made during the course of the conspiracy.

22 MR. MALLIN: Objection, your Honor.

23 THE COURT: We are talking now about
24 the identity of the party to the conspiracy not the
25 fact of the conspiracy. He's already testified

1
2 to that through the transactions that led up to
3 the transactions and to the occurrence. Now
4 then the words are used at the time of the con-
5 summation of the contract and offered solely for the
6 truth of the matter, since the transaction is now
7 and accomplice, they may not be received unless
8 covered by an exception to the hearsay rule. They
9 are not.

10 MR. APPLEBY: Your Honor, as I
11 under the transaction had not occurred yet. This
12 was during the course of the discussion with
13 Yolanda Bolanos at the Burger King .

14 THE COURT: Before the transaction
15 you mean.

16 MR. APPLEBY; During the course of
17 the transactions. This is not a post conspiracy
18 statement.

19 THE COURT: What part of the conver-
20 sation are you talking about. What time of day,
21 where?

22 MR. APPLEBY: This is when
23 Detective Rodriquez went to the Burger King to
24 purchase directly from Yolanda Bolanos the cocaine.
25 She had made statements during the transaction.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Perhaps I -- Your Honor I talked to Detective Rodriguez at lunch and he told me that he testified when he was talking to Yolanda Bolanos at the Burger King concerning the cocaine dealing. He asked Yolanda is this the cocaine that came from the man that I talked to on the phone that day, referring to April 7, and she said, yes, it is.

THE COURT: Now does that functional value to carry forward the consummation of the transaction.

MR. MALLIN: As to the truthfulness that's--

MR. APPLEBY: This is a statement made during the course of the conspiracy.

THE COURT: It's not made in furtherance of the conspiracy it's just the undercover man

MR. APPLEBY: That's made, your Honor. She also stated that she could get more cocaine from the same supplier. This is in the record. She was trying to entice the detective into further transactions from her supplier.

THE COURT: If the only basis on which it is admissible is the basis on which is the truth or false is immaterial, I would have so

1
2 to instruct as I did each time and you're not
3 offering it for that purpose. You are now offer-
4 ing it not for its functional effect and the con-
5 nection and for the conspiracy but for the pur-
6 pose of having in the record what you saw as
7 admissable evidence of the identify of the
8 supplier. Now, that's pure hearsay.

9 MR. APPLEBY: I think it only shows
10 that she intended to carry forward the conspir-
11 acy after that day.

12 THE COURT: It's not offered for
13 that purpose. At that point the conspiracy was
14 virtually at an end. All the men in the stake
15 out were in place. The trunk sign had been
16 agreed on and everybody knew tha there was not
17 going to be any further Yolanda Bolanos transaction
18 until she got out of jail.

19 MR. APPLEBY: I understand the rule,
20 your Honor. It it's not a post--

21 THE COURT: I can't help that. It
22 is only the receiving in evidence because it is a
23 verbal act in frurtherence of the conspiracy. Its
24 admissibility is independent of its value as truth
25 telling material. Its functional value in carrying

1
2 toward the conspiracy is what gets in evidence not
3 because it throws any light on the truth as to
4 members in the conspiracy when the name of the
5 person not yet connected with the conspiracy is
6 used in it.

7 MR. MALLIN: I would reknew my
8 motion to strike.

9 THE COURT: No, he hadn't finished
10 his case.

11 MR. APPLEBY: No further questions,
12 your Honor.

13 (All counsels return to their seat)

14 MR. MALLIN: Your Honor may we
15 approach the side bar.

16 (All counsels approach the side bar)

17 MR. MALLIN: Your Honor, the
18 defendant has a bladder problem.

19 THE COURT: We'll have a short recess
20 now. Please do not discuss the case with one
21 another or anyone not on the jury until it's
22 given to you to decide.

23 (The jury leaves the courtroom)

24 MR. APPLEBY: Your Honor, I'd like
25 to address myself to the question of evidentiary

1
2 that we just talked about at the side bar. It's
3 the government's position that the statement made
4 by Yolanda Bolanos concerning the supplier or the
5 man that she referred to talking to Agent Rodriguez
6 on the telephone was indeed in furtherance of the
7 conspiracy. Her statement that the stuff or co-
8 caine came from the man on the telephone was in
9 order to induce Detective Rodriguez to purchase
10 that cocaine. She was in effect saying he was a
11 good guy and were you impressed with him and well
12 that slick operator, he's the guy that's supplying
13 the cocaine. In other words, induce him to
14 purchase the cocaine.

15 Further more, your Honor, one must ask--

16 THE COURT: Your theory is a good
17 good --

18 MR. APPLEBY: One must ask why was
19 she making the statement if it was not in further-
20 ence of the conspiracy.

21 THE COURT: People talk all the
22 time. But, I take it your argument is it was in
23 furtherance of the conspiracy truth or false.

24 MR. APPLEBY: That is true. You
25 asked me whether I'm intending to show identity

1

2

that's true it also shows that purpose, there's no question.

3

4

THE COURT: It didn't really show identity.

5

6

MR. APPLEBY: Well, it connects. It doesn't, right, your Honor. It doesn't show but it connects.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: I can't say to the Jury that it is evidence which can be regarded by them as evidence that Mr. Parras was a member of the conspiracy because the difficulty with the word infurtherence refers to the conspiracy and those can serve as example are used indepently of their truthfullness. She had twelve ounces of cocaine in her hands. Now having twenty-one percent cocaine she wanted to get over Thirteen Thousand Dollars for it. Now, if it had come from James Fox (Ph) she certainly wasn't going to say to Mr. Rodriquez that is the stuff I got from the fellow named Mames Fox (Ph) because Roberto let me down but will you buy it anyway. So, she says when she thinks we will further the transaction truth or false. If it isn't Roberto but she thinks that would put the transaction over and she said

1

2

Roberto knowing it's false.

3

4

MR. APPLEBY: Your Honor, you're making an excellent argument for summation.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: I'm not talking about that. I want to emphasize whatever whether this case or the other case which is my opinion are quite wrong about after there is proof of membership in the conspiracy can be done with all the other talk independently of that.

At this stage of the conspiracy it only comes in as words in furtherence.

MR. APPLEBY: Your Honor, my understanding of the hearsay rule in terms of conspiracy is that the government must prove by independently or independent evidence that a conspiracy existed. Once we prove that a conspiracy exists then every statement and every action on the part of the conspirators can be attributed to his fellow conspirator

THE COURT: Not to each fellow who knew competent evidence has shown to be a member of the conspiracy. There must be competent evidence of membership. It doesn't really make any difference whether it's a conspiracy or not

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

as long as you have cooperating trying- - whatever you call it, two or more people putting through a transaction together and working together and perhaps your thinking is improved if you leave the word conspiracy out of it all together. Was this part and parcel of the criminal transaction.

MR. APPLEBY: Why would she make the statement if it was not part of the transaction.

THE COURT: To put it through. I think you're right about that.

I have to get the Jury. We can't consider it at this stage of the case.

MR. MALLIN: Well, Your Honor, I would object to going into it all. It's strictly hearsay. I don't see any independent evidence that there has been a conspiracy on the April 9th transaction. I didn't see any length from the telephone conversation in which Roberto was recorded on April 7th linking him in any way to the April 9th transaction other than when Yolanda may have told the agent.

THE COURT: There is evidence of conspiracy between Yolanda and a male voice. I think

004

1

2

you are reconciling with that at the moment.

3

4

MR. APPLEBY: Well, the male voice whose voice happens to be the same as the defendant.

5

6

7

8

THE COURT: So that the remainder at the whole of the independent evidence of Mr. Parras connection on to Mr. Rodriguez's identification of his voice--

9

10

11

12

13

MR. APPLEBY: And other evidence that will be adduced. But that conversation on April 7, there's no question that whoever the person on the telephone conversation was was involved in the conspiracy.

14

15

16

17

18

MR. MALLIN: There is a question. There was a discussion on April 8th transaction. There's no charge with that transaction they are charged with the transaction which occurred on April 9th--

19

20

MR. APPLEBY: The only reason that the April--

21

22

23

24

25

THE COURT: You don't know.

MR. APPLEBY: Detective Rodriguez testified that he talked to Yolanda Bolanos and he said what happened and she said, my connection was--

MR. MALLIN: Exactly, it all comes

1

2

from Yolanda.

3

4

5

6

I think at this point to allow those statements to continue to go in without connection I would ask the U.S. Attorney to make an offer of proof if he's going to connect these things.

7

8

9

At this point they are so prejudicial in the weight of those things being heard by the Jury.

10

11

12

13

14

15

16

17

THE COURT: It isn't prejudicial.

If the Jury is satisfied that Mr. Parras was a participant in this transaction, a willing participant in the transaction then all of this does become part and parcel with the transaction. But it in effect and I say this is the theory of the game of the case that if it's sort of verification of what has gone before--

18

19

20

21

22

23

24

25

MR. MALLIN: I would submit the competent independent evidence that we have heard thus far does not link Mr. Parras and the April 9th transaction. I've heard no evidence other than the mouth, other than what Yolanda may have said to the detective that would link him to that transaction and her testimony or what she said can't come in until there is no independent

1

2

competent probative evidence.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: No in spite of this weakness what does connecting it, if anything is what appears in the government Exhibit Three D plus the voice identification and anything hear after.

MR. MALLIN: I still contend the voice identification pertains to a transaction that was to take place on April 8th.

THE COURT: Yes, that's part of the problem.

MR. APPLEBY: So, your Honor, May I recall Angel Rodriquez.

THE COURT: Yes, certainly.

MR. MALLIN: Note my objection.

THE COURT: Yes, certainly.

Do you know whether or not O'Rourke has got a copy of it and whether he plans to file a Notice of Appeal?

MR. APPLEBY: I don't know that, your Honor. I just saw Olivia Brutonis(Phonetic) and I gave her a copy of the decision.

THE COURT CLERK: I'll mail one to O'Rourke.

My Appelby by my notes indicate that the talk

1

2

3

4

about whether or not the man on the phone was the man who accepted occurred after the delivery but before the Trunk Act.

5

MR. APPLEBY: After the delivery?

6

THE COURT: Before the Trunk Act.

7

MR. APPLEBY: The detective is

8

right here. Perhaps we can ask him before he takes the stand.

9

10

THE COURT: All I have is he saw

11

Yolanda in the restaurant and he said, do you have

12

it with you and she said, yes. He said, let's do

13

it in the car. She went out to the car, got in

14

and produced the bag. Then he turned it over to

15

his partner.

16

MR. RODRIQUEZ: I don't hear you.

17

THE COURT: I think that's what you

18

said. He gave it, I put down his partner. And

19

then he said to Yolanda that you get called later

20

on. Yolanda said, I have to ask the connection and

21

Mr. Rodriguez said, was it the man on the phone

22

who said this. Now, that's shorthand for what he

23

said, very shorthand and then he said I'll go to

24

the back of the car and get the money. He opened

25

the trunk and then the arrest.

000

1

2

MR. RODRIQUEZ: I said that.

3

THE COURT: I just wanted to be sure.

4

I wanted you to know.

5

MR. RODRIQUEZ: I recollect saying

6

that.

7

THE COURT: I'm talking about the

8

sequence from that point out of where it had come

9

from.

10

MR. RODRIQUEZ: We talked before she

11

was arrested. We talked.

12

THE COURT: Yes, but after she

13

delivered the narcotics.

14

MR. RODRIQUEZ: As soon as she

15

delivered the narcotics we talked. She came in and

16

sat in the back of the car. We talked for a little

17

while. We wanted to see, possibly to get more

18

narcotics. I asked her myself, personally, was

19

this the guy that I spoke to on the phone.

20

MR. APPLEBY: Before she delivered the

21

cocaine?

22

MR. RODRIQUEZ: While she was in the

23

car. Then she showed me the cocaine. We didn't

24

go right into it right away. She had a hamburger

25

and a soda and we gave her--

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: She had a lot of stuff
in the back.

MR. APPLEBY: The conversation
concerning the man on the phone?

MR. RODRIQUEZ: That was before she
actually produced the package.

MR. APPLEBY: And did she say she
had one eighth of a kilogram of her own stuff?

MR. RODRIQUEZ: She said that she--
she did say that the two eighths came from the man
I spoke to on the phone.

MR. APPLEBY: And the other eighth?

MR. RODRIQUEZ: The other eighth she
also stated even after the time, after we arrested
her she also stated that this stuff belonged to
Roberto.

MR. APPLEBY: That's after?

THE COURT: That didn't help us any.

MR. APPLEBY: Can I call to ask him
the questions?

THE COURT: Yes.

MR. RODRIQUEZ: That was on the
record this morning.

THE COURT: Call the Jury.

1

2

MR. APPLEBY: Recall of

3

Detective Rodriquez to the stand.

4

(The Jury enters the courtroom)

5

THE COURT: Now, Mr. Rodriquez is

6

recalled to be asked a further question which is the

7

same question he was asked before which at that time

8

an objection was sustained.

9

RE DIRECT EXAMINATION

10

BY MR. APPLEBY:

11

Q Clarify the matter, Detective Rodriquez, can

12

you tell us what Yolanda Bolanos told you concerning

13

her source of supply; at what point in the transaction

14

did that conversation take place?

15

THE COURT: On the night of?

16

Q On the night of?

17

A This conversation took place as soon

18

as we entered the vehicle at the burger king parking lot.

19

She told me that she had three eighths of cocaine, three

20

eighths is total of sixteen ounces of cocaine, that two

21

of these eighths, two packages belonged to the connec-

22

tion that I had spoken to on April 7th on the phone. And

23

that the other eighth belonged to a different connection.

24

She also stated that she would not, in other words, I

25

asked her if I could get more cocaine from these connections.

1

2 and she said that she would have to go back and ask
3 this connection. Now, two connections. It was possible
4 there it was more but she was pretty sure there was
5 more. Now, she firmly did state that the two eights did
6 belong to the person I spoke to on the night of April
7 7.

8

Q And was that before or after she actually
9 delivered the three eighths quantity of cocaine?

10

A This was about half a minute before
11 she opened the bag and showed us the contents of the
12 cocaine. You see, she had a hamburger in her hand and
13 a soda and she was in a rush to do the business. She
14 was kind of nervous. I asked her, Why don't you eat
15 first then we'll talk.

16

Q How many cases had you testified to in
17 Court, approximately?

18

MR. MALLIN: Objection, your Honor.

19

THE COURT: Overruled.

20

A Allright. I would have to say over
21 three hundred cases.

22

Q And has in your experience in the Federal
23 Court and this circuit has there ever been a voice print
24 analysis made?

25

A No.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. MALLIN: Your Honor, he's

answered the question.

THE COURT: He's answered the

question.

MR. APPLEBY: Thank you.

MR. MALLIN: May I examine?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. MALLIN:

Q Detective Rodriquez, this material that you've just related to you didn't tell us about this this morning?

A I did say this morning that she had stated that this stuff was-- I spoke to her personally on April 7th.

Q What you related to us now is after you've had conversations with the U.S. Attorney in this matter.

A No, that is what I was asked different questions and I answered.

Q You had conversation with the U.S. Attorney at the lunch time; did you not over this?

A We had a conversation but not about this.

Q You didn't talk to him about this matter at

1

2 all, what you just testified to now?

3 A No, I just answered him a couple of
4 questions in regards to another person in this case.5 Q When you just testified to as to what
6 Yolanda Bolanos told you at that time you didn't discuss
7 that particular testimony with the District Attorney a
8 few minutes ago?

9 A I looked at my notes, no.

10 Q You didn't discuss this?

11 A No.

12 Q You didn't discuss it over lunch time?

13 A We did discuss a case but not this
14 particular matter.15 Q Now, what Yolanda Bolanos told you, you
16 don't know for a fact that what she was telling you was
17 the truth?

18 A Well--

19 Q Answer yes or no.

20 A I couldn't answer.

21 Q You don't know for a fact where she got this
22 cocaine from?

23 A Only what she said.

24 Q What's your answer?

25 A No.

000

1

2 Q And she didn't give you any further identi-
3 fication of this person Roberto other than say that this
4 man Roberto who you had spoken to over the phone?

5 A Well, she had given more identifica-
6 tion.

7 Q She described him?

8 A Well, what time during the conversation?

9 Q Did she ever give you a description of him?

10 A After?

11 Q At the time of this conversation at the
12 Burger King?

13 A No, not at this time.

14 Q And you say that she mentioned that she
15 may have some additional cocaine; is that correct?

16 A She stated that she had two connections,
17 one for the eight ounces and an additional one for four
18 ounces.

19 Q So far as you know both of the connections
20 could have been named Roberto; is that correct?

21 A Well, I can't say that. They could be.

22 Q That possibly could have been a code name
23 as well as her connection as Roberto?

24 A I don't know I couldn't answer that.

25 Q And again, you have no way of knowing whether

1

2 why I made the motion. I assumed that he would
3 be a witness and that was what I had in mind.

4 THE COURT: You should have drawn
5 that to my attention.

6 MR. MALLIN: I assumed when I said
7 any potential --

8 THE COURT: It doesn't to my mind.

9 MR. APPLEBY: Very often the defense
10 attorney like to have the case agent because it's
11 a good cause they can say he listened to all of the
12 testimony.

13 (All attorneys resume their seats)

14 F R A N K B E R B E R I C H, having been duly
15 sworn, called as a witness on behalf of the People,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. APPLEBY:

19 Q By whom are you employed?

20 A New York City Police Department.

21 Q And are you attached to the Trunk Enforcement
22 Administration?

23 A The New York Task Enforcement.

24 Q How long have you been with the police
25 department?

103

1

2 A I've been in the police department over
3 fifteen years. I've been assigned to the Narcotics
4 Investigation for approximately Eight years and with the
5 Task Force approximately three years.

6 Q You were the case agent in charge of this
7 case on trial?

8 A I was.

9 Q Now, agent, did there come a time when you
10 met with a woman by the name of Olivia Butron (Phonetic)?

11 A Yes.

12 Q Can you tell us how it came about that you
13 made contact with Miss Butron?

14 A I had, after a conversation with
15 Detective Rodriguez, I verified a telephone number that
16 I received from Detective Rodriguez through the tele-
17 phone company security office. And I verified the
18 subscription register for the telephone number. This
19 was registered to Olivia Butron, adress on 83rd Street
20 and Jackson Heights. And after going to that location
21 which was 3409 83rd Street, apartment 42 D as in David,
22 I ascertained that the apartment had been vacant. I
23 had a conversation with the superintendant and controlling
24 agent for the premise and ascertained that the apart-
25 ment had been vacant rather suddenly on the weekend at

1

2 Q Those conversations were from your notes;
3 is that correct?

4 A Either from my notes or from the
5 best of my recollection.

6 Q In fact in report number 3500-4 you related
7 in substance what Mr. Parras told you at that time; is
8 that not correct? You may look at the report if you
9 wish.

10 A If I may.

11 Q I think under number seven you related what
12 you've told us. Now, have you made other reports in
13 this case?

14 A No, I believe all the reports have
15 been included.

16 Q What other reports have you made that we
17 now have in the courtroom? If you can tell us?

18 A There's a few there.

19 Q Can you tell us ; do you know how many
20 different reports were made?

21 A Approximately a half a dozen.

22 Q At least six different report; is that
23 correct?

24 A1 Approximately, I'm not saying exactly.

25 Q Any of these reports, did you put down the

1
2 information that you saw Mr. Parras back in April 9th?

3 A No, sir.

4 Q You never put that down in any of your reports?

5 A I believe, wait a minute, if I may
6 go back some.

7 Q Take your time and look them over.

8 A I believe in that report that you
9 are referring to sir, in paper two.

10 Q I don't have that let me get my copy .

11 A I don't know what the 3500 number. I
12 have the arrest on May 17th. If you follow, sir in
13 page two I indicate in the report the male had been
14 seen previously on April 9th at approximately five o
15 five p.m. and registration number 179 A O New York
16 Registration by Police Officer Berberick.

17 Q Now, in that report you don't indicate
18 where you previously saw him; is that correct?

19 A No, I just indicate the time and place
20 and I know where I was on that particular night.

21 Q There's nothing in that report that indicates
22 the place where you saw him?

23 A No, sir.

24 Q There's nothing in the report that indicates
25 you saw him exit from any particular apartment at that

1

2 time; is that correct?

3 A No, sir.

4 Q On May 17th, when you were following this
5 car this was not a chase, they weren't going at an
6 excessive rate of speed were they?

7 A No, sir.

8 Q When you stopped this car you found no
9 narcotics in this particular car; did you?

10 A Correct.

11 Q The woman who was in this car she's in no
12 way related to this case?

13 A I believe she is related and with
14 a subpoena I attempted to find her. I was given a false
15 identification on the date that I apprehended the
16 vehicle.

17 Q She's not Yolanda Bolanos or Olivia Butron?

18 A No, sir.

19 MR. MALLIN: I have no further
20 questions.

21 MR. APPLEBY: No redirect, your
22 Honor.

23 THE COURT: You may step down.

24 MR. APPLEBY: Your Honor I'd like
25 short side bar with respect to the next witness.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

md/ss
1/1

THE CLERK: United States of America Versus
Parras.

MR. APPLEBY: Your Honor, the Government calls
Marguerita Mensa.

THE CLERK: Will you please raise your right
hand.

M A R G U E R I T A M E N S A , having been first duly
sworn by the Clerk of the Court, was examined and
testified as follows:

THE CLERK: You may lower your hand. Please
state your name and spell it.

THE WITNESS: My name is Marguerita Mensa;
M-e-n-s-a.

DIRECT EXAMINATION

BY MR. APPLEBY:

Q Mrs. Mensa, what is your occupation?

A I am an interpreter and translator.

Q How long have you been a translator?

A I have been a translator now for approximately
five and a half years.

Q What languages do you translate?

A I translate Spanish, French and very occasionally
I translate another language which I also speak, Catalan.

Q What is your nationality?

A I am Spanish.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Will you tell the members of the jury, what is your educational background?

A Yes. I was born in Barcelona, in Spain. I was brought up in Barcelona. I studied for a Bachelator Supirior. A Bachelator takes seven years. When I finished with the Bachelator I decided to go to England. I mean to London to study English. I studied English grammar and literature. I went to Cambridge University, passed my exams there. I learned French from a very early age in Barcelona. I had opportunities, many opportunities to travel to France because France is actually just about two hours away from Barcelona by car. I learned French.

I went to the University of Talousse in France and passed my exams there. After completing this, I went back to Spain and I worked in Spain for several years as a private secretary, bi-lingual secretary.

Part of my duties was to translate French and English documents, correspondence and this kind of thing. In 1968 I went to the United States for the first time as a tourist. My husband, for family reasons, decided to move to New York.

In 1971, for the first time, I started to work as an interpreter in the Courts. I am not employed by the Court.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Maybe I should say that.

Q Maybe you can explain how you work with the Courts?

A Yes, I am what you call a free-lance interpreter. In other words, I am not employed by the Government. I work on my own. Occasionally I work for the defense attorneys and very often I work in Court. When I work in Court, I come here and I get paid. If I come I get paid. If I don't come, I don't get paid. It's on a daily basis.

Q You work for the United States Attorney's Office as well, don't you?

A I do, yes.

Q Will you explain your work in the United States Attorney's Office to the members of the jury?

A Yes. When we come here, it's not only me. There are other interpreters who work here. We are normally assigned to different cases that are going on, cases that are being prepared; witnesses that have to be debriefed; defendants who need interpreters because they are not familiar with the English language and they are on trial. So, they have to be sitting next to them translating verbatim whatever is said by anybody else.

Sometimes we have to give written translations. We are given documents, wiretaps conversations that have to

1 be translated from the language to English.

2 Q You work with Spanish Government witnesses and
3 Spanish speaking defendants; is that right?

4 A That's correct, yes.

5 Q Will you tell us how many such Spanish speaking
6 witnesses or defendants you have interpreted for?

7 A You mean for the five years I have been here?

8 Q Yes; approximately.

9 A I would say in the hundreds; maybe three, four
10 hundred different witnesses and defendants.

11 Q There are different types of Spanish speaking
12 people; is that right?

13 A That's correct, yes.

14 Q And could you tell us the different types of
15 Spanish speaking people that you translate for?

16 A Well, as I said, I am Spanish myself. I am
17 European and my Spanish is -- it's maybe a little different
18 from the Spanish that is spoken in South America and Mexico.
19 The language is the same. It is an accent that is different.
20 I can tell --

21 Q How many different types of Spanish speaking
22 people, though, have you worked with? What nationalities?

23 A I have worked with many from many different
24 countries. I have worked with South Americans, with Mexicans.
25

1
2 I have worked with people from Venezuela; Columbians;
3 Peruvians; Chileans; Argentinians; practically from every
4 country in South America.

5 Q You are familiar with the ways in which these
6 different Spanish speaking people speak; is that correct?

7 A Yes, that's correct.

8 Q And each, depending on where you come from,
9 from what country they come from, you may speak a different
10 type of Spanish; is that correct?

11 A That's correct. Basically the language is
12 Spanish and it is the same. Each country has different
13 mannerisms; different specifications. They may use words
14 that we don't use. It doesn't mean that we don't understand
15 each other. We understand each other very well. It's just
16 a question of different mannerisms.

17 Q You stated you worked with Columbians?

18 A That is correct.

19 Q Could you give us an approximate figure of the
20 Columbians you translated for in the course of your work?

21 A It's difficult to be precise about this, but
22 I would say -- I don't know. Approximately, I would say from
23 100 to 200 Columbians, in the course of the last five and a
24 half years.

25 Q And how do Columbians talk differently than

1
2 other Spanish speaking people? Let's say --

3 THE COURT: If they do.

4 MR. APPLEBY: If they do.

5 Q Do they speak differently?

6 A They do. They have an accent that is their
7 own accent. They have a special way of expressing themselves.

8 You can tell whether a person comes from
9 Columbia or whether he comes from, let's say, Puerto Rico.

10 Q Now, you have also worked with tape recordings
11 of telephone conversations and wiretaps, you stated; is that
12 correct?

13 A That is correct, yes.

14 Q And you told us a little bit how you worked with
15 tapes and recordings; is that correct?

16 A Yes. Normally what I am asked to do with tape
17 recorders is listen to the recordings and transcribe them into
18 English.

19 Q Have you ever listened to tape recordings for
20 the purposes of making a comparison to another known voice?

21 A Yes. Yes, I have.

22 Q Now, Mrs. Mensa, when is the first time that you
23 learned that this case, right here in this Courtroom, was on
24 trial?

25 A Yesterday morning when I arrived. Yesterday

1 morning at 10 o'clock. I only arrived here at 10 o'clock.
2 I received a message downstairs. A secretary told me to come
3 right up to Judge Dooling's Courtroom. I did.
4

5 I came in. I sat there for a while. I didn't
6 know what this whole thing was about, and in fact, I was
7 thrown out of the Court, I think because the defense attorney
8 said something about potential witnesses. I didn't know. I
9 left the Court. It was yesterday for the first time that I
10 knew I was going to be a witness.

11 Q And then you had a conversation with me; is
12 that correct?

13 A Yes, I did.

14 Q What occurred at that time?

15 A You explained to me what you wanted me to do
16 and then later on --

17 Q What did I explain to you that you should do?

18 A Explained that you wanted me to listen to --
19 you are going to give me two tapes; two recorded
20 conversations, and you wanted me to listen to those
21 conversations and try to establish if the voice on one of the
22 tapes, a male voice, was the same voice on the other tape.

23 Q Do you know, other than those two tapes that you
24 listened to, do you know about any of the other evidence in
25 this case?

1 A No, I really don't.

2 Q Now, after you received these two tapes from
3 myself, what did you do?

4 A I got those tapes yesterday, I think early in
5 the afternoon. I had a cassette tape recorder and I played
6 them many times. I listened to the conversations and I tried
7 to establish whether or not the male voice on one tape was
8 the same male voice on the other tape.

9 Q Mrs. Mensa, I would like to show you --

10 MR. MALLIN: I'm going to have to have a voir
11 dire to determine the qualifications in this area.

12 THE COURT: Are you at that point now?

13 MR. APPLEBY: I'd just like to introduce the
14 tapes, first, identify the tapes and if he wants to
15 have a voir dire --

16 Q I am showing you what is now in evidence as
17 Government's Exhibit 6 and also Government's Exhibit 3 in
18 evidence and ask you whether you recognize those two tapes?

19 A Yes, these are the two tapes that you gave me
20 yesterday.

21 VOIR DIRE EXAMINATION

22 BY MR. MALLIN:

23 Q Mrs. Mensa, have you had any special training in
24 voice identification?
25

1
2 A No, I have not.

3 Q Have you read any books in that subject?

4 A No.

5 Q Have you ever attended any seminars or lectures
6 in that subject?

7 A On voice identification?

8 Q Yes.

9 A No.

10 Q Do you know what a voice print is?

11 A I have some idea what a voice print is, yes.

12 Q Could you tell us what a voice print is?

13 A As I understand what they do is they take an
14 exemplar of your voice. They take it and that's what is
15 considered a voice print and it's sent to a laboratory
16 somewhere to be examined.

17 Q Do you have any familiarity with how a voice
18 print works?

19 A I have some idea but --

20 Q Well, have you worked on a voice print machine?

21 A No, I have not. Personally, no.

22 Q Have you ever been involved in a situation
23 where a voice print was used?

24 A I know of a case --

25 Q No; that you were personally involved in.

1
2 A As an interpreter?

3 Q No, in working with a voice print machine.

4 A Not working with a voice print machine.

5 Q That wasn't used in this particular situation?

6 A In this case, no, it has nothing to do.

7 Q Do you consider yourself an expert in voice
8 identification?

9 A No.

10 MR. MALLIN: No further questions on voir dire,
11 your Honor.

12 MR. APPLEBY: May I proceed?

13 MR. MALLIN: I continue my objection based on
14 what we discussed yesterday.

15 THE COURT: All right, now the objection which
16 Mr. Mallin makes is based on what he has brought out
17 in his cross-examination and that is that Mrs. Mensa
18 does not hold herself out as having any special
19 expert training in voice identification, either through
20 voice print or otherwise.

21 You may ask why hear her. Well, as we know from
22 having heard the tapes, they are in the Spanish
23 language and the reason that we are hearing Mrs.
24 Mensa on the witness stand today is to see what, if
25 any, help she can give you as jurors in the problem

1
2 which remains yours, of trying to determine whether or
3 not the voice in the second telephone conversation is
4 the same voice heard in the May 17th tape, Exhibit 6,
5 and which professes to be a conversation between
6 Mr. Rodriguez, the Government's first witness, and the
7 defendant, Parras.

8 Now, the reason I am allowing you to hear this
9 is because it appeared to me that a difficulty that we
10 have in making a comparison, which you in the end and
11 you alone must make, is the foreign language barrier.

12 What is likely to strike most of us is they are
13 in the Spanish language both times. That is the thing
14 that stands out to us. We can't understand it because
15 it's in a foreign language. So, what I hope that
16 Mrs. Mensa will be able to do with us is to help to
17 remove that barrier so that you can reach, in your
18 deliberations, the voice quality, the voice modes of
19 speaking, etcetera, which must determine with you
20 whether or not you do find that this was the same
21 voice on both tapes.

22 We will see, however, if this goes but I must
23 make clear to you that the decision on this point, the
24 determination of the issue of fact is totally yours
25 and that the testimony of Mrs. Mensa is simply to give

1
2 you an additional means by which to make the
3 comparison.

4 All right, proceed.

5 MR. APPLEBY: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. APPLEBY: (Continuing)

8 Q Mrs. Mensa, could you tell us very briefly what
9 you did with those tapes?

10 A Yes. I took the tapes, I played the tapes
11 quite a few times, many times. I tried to find words on both
12 conversations that might have been repeated; exact words. I
13 couldn't find many.

14 I finally found not a word, exactly. At one
15 point in the first conversation, the male voice says "Um, um"
16 twice. On the second conversation, the same expression,
17 "Um, um" is repeated and I played both "ums" immediately one
18 after the other and they sounded to me like exactly the same
19 intonations; exactly the same.

20 I looked for other words and the only other
21 word I find that was repeated was the word hello in English,
22 which I also played right immediately one hello right after
23 the other hello and it sounded to me like the same intonation
24 and again it sounded to me like the same voice.

25 These are the only two words that I could find

1
2 were repeated in both conversations.

3 Q In terms of the inflection, modulation and tone,
4 did you make a comparison?

5 A Yes, I did. By listening to the two
6 conversations many times, I concluded, to my personal
7 opinion, that's all I can give you, is that it's the same
8 voice.

9 Q Did you make a conclusion as to the origin or
10 nationality of the same -- you say is now the same individual?

11 A Yes. My opinion of the male that -- the man
12 that was talking on the telephone on both conversations is
13 from Columbia.

14 Q Did you hear any other male voices on that tape?

15 A Yes, I did.

16 Q Did you make any comparison?

17 A Well, on one tape, I remember, at the very
18 beginning, there is a male voice in English saying something
19 like "Fran, hello Fran" and then goes right to the Spanish
20 portion and on the other tape, there is also a voice, this
21 time in Spanish speaking to the individual whom I think is a
22 Columbian and this voice is the same voice, in my opinion, as
23 the voice on the first tape talking in English, saying "Hello,
24 Frank," or something to that effect.

25 Q Did you ever meet Detective Angel Rodriguez

1
2 before?

3 A No.

4 Q Have you ever seen the defendant, who is
5 sitting in between Mr. Boyne and Mr. --

6 A I saw him yesterday for the first time.

7 Q You never heard his voice before?

8 A No, I have never spoken to him.

9 MR. APPLEBY: All right, no further questions,
10 your Honor.

11 Excuse me, I do have one further question.

12 Q You say it's the same. With what degree are you
13 sure, positive, that it is the same individual?

14 A If you ask me for my opinion, I say, yes. It
15 is the same individual.

16 CROSS-EXAMINATION

17 BY MR. MALLIN:

18 Q Mrs. Mensa, you say you work as a free lance
19 interpreter; is that correct?

20 A That is correct, yes.

21 Q In the past year, have you done any work other
22 than for the U.S. Government?

23 A Yes, I have.

24 Q How many times have you worked for the U.S.
25 Government in the last year?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A How many times have I worked for the U.S. Government in the last year?

Q Yes.

A I would say -- you want me to give you a -

Q A rough estimate.

A Normally, I come here every day but --

Q Is that at the call of the U.S. Attorney's Office?

A Yes. That doesn't mean I come. Some days I do work for other attorneys.

Q I am trying to determine what percentage of your work is done for the U.S. Government?

A I would say, in the course of the last year, specifically the last year, I would say 90 percent of my work was with the U.S. Government.

Q And the U.S. Attorney's Office?

A Not in particular. Sometimes for the DEA Agency; sometimes.

Q Law enforcement agencies?

A Yes.

Q You are paid by these agencies or the U.S. Government?

A That is correct.

Q Were you paid for your work on this case by the

U.S. Government? Will you get paid?

A In this particular case?

Q Yes.

A I am not going to get any special pay for this particular case. As I said, when I come here, it's by the hour. So, it doesn't make any difference to me whether I am testifying here in this case or working downstairs with a witness.

Q The money that you receive for being here, at this time, is being paid by the U.S. Government?

A Yes, definitely, because I am here today.

Q And you were given these two tapes to listen to; is that correct?

A Yes.

Q Were you given any other tapes with other voices by means of comparison?

A I was given other tapes, except, other than these two tapes?

Q Yes.

A No.

Q So, you were only asked to listen to these two tapes? Is that correct?

A That is correct.

Q You were not asked to listen to other tapes,

1
2 which might have had a man speaking with a Columbian accent;
3 is that correct?

4 A That's correct.

5 Q And did you do a line by line analysis of these
6 voices that you heard?

7 A If you mean by that --

8 Q Word by word analysis?

9 A I did concentrate very much on the words being
10 spoken because as I said, I was trying to find words repeated
11 on both conversations.

12 Q Well, can you give us a word by word analysis of
13 what you found?

14 A I don't understand what you mean by that.

15 Q Can you take each particular word that you heard
16 and explain to us how that word tells you that it's the same
17 person speaking on the two tapes?

18 A I don't think it's necessary to go word by word.
19 When you hear a conversation and you get a general impression
20 of the way an individual talks, you don't really have to
21 concentrate on, let's say -- he has said "Buenas dias" and
22 how he says this "Buenas dias," would have been easier for
23 me if the same words were repeated on both. So, I had to
24 limit myself to the very few expressions that I found were
25 similar on both tapes.

1
2 Q So, you weren't able to do a word by word or
3 line by line analysis, except for those instances that you
4 told us about?

5 A Word by word, no, I couldn't. There was no
6 basis for it. They were not the same words spoken on both.

7 Q The only words you were able to make an analysis
8 of this expression of "Uh-hum"?

9 A A specific analysis, yes, but then you get a
10 general idea --

11 Q Just answer my question.

12 A I'm sorry, yes.

13 Q The word "hello"?

14 A The word "hello" was also repeated on both, yes.

15 Q Obviously, neither of these are Spanish words,
16 themselves?

17 A Obviously the "hello" is not a Spanish word but
18 as far as "uh-hum," it's international.

19 Q This voice you heard, was this a normal
20 middle range voice?

21 A Nothing particular to it.

22 Q Nothing distinctive about it or no unusual
23 characteristics? In other words, specifically a high voice;
24 anything like that struck you?

25 A No, not really.

1
2 Q And would you say that you were absolutely
3 certain that these were the same voices?

4 A My opinion is that these two voices are one
5 voice. Now, scientifically, if you are asking me scientifically,
6 obviously I can't say a hundred percent because I don't have a
7 scientific comparison.

8 MR. MALLIN: Thank you for being candid.

9 MR. APPLEBY: No further questions.

10 Thank you, Mrs. Mensa.

11 Your Honor, the Government rests.

12 THE COURT: We will have a short recess now.

13 Members of the jury, please do not discuss the
14 case with one another or anyone not on the jury, until
15 it's given to you to decide.

16 THE CLERK: Please rise.

17 (Thereby, the jury was excused and a ten-minute
18 recess was commenced.)

19 (Continued next page.)
20
21
22
23
24
25

1 it has to be is a transfer of possession and that
2 becomes a distribution. I think --

3 MR. MALLIN: Certainly my motion is also based
4 on the fact the competent evidence in this case does
5 not suffice to send this case to the Jury and I have
6 gone over my arguments. I don't wish to repeat them
7 now. Basically, they are the same arguments as to the
8 hearsay evidence of Yolanda Bolanos which I don't feel
9 is competent testimony in this case.

10 THE COURT: I think this is the kind of case in
11 which one single intervention does the job, if one is
12 confident of that intervention, and that the transaction
13 later occurred was part and parcel of that intervention.
14 I think the point is that if the testimony that the
15 voice in the second conversation was that of the
16 defendant is accepted as true by the Jury, that you
17 then have this voice, this Roberto conspiring with
18 Bolanos to deliver narcotics. Two days later, a day
19 later on the schedule Bolanos does deliver narcotics.
20 The two are conspirators in narcotics delivery. She,
21 in order to get the \$13,200 or what ever it says to
22 Mr. Rodriguez, two-thirds of this comes from the voice;
23 one-third from another connection of mine. The real
24 question there is , again, we are thrown back on if the
25 Jury is able to infer from time and proximities,

1 rational expectations, that there can be some indication
2 that it is the same conspiracy, then that language is
3 accountable to the defendant. If it isn't then it isn't.

4 In other words, if it's a separate conspiracy,
5 I think the Jury has a problem there in finding out
6 whether it is or not. Meaning a mere delay of a day is
7 enough to say that the whole chain of logic breaks down.

8 MR. MALLIN: Even if we were to assume --

9 THE COURT: I don't think I can say that as a
10 matter of law. I am not saying that you shouldn't
11 renew it after the verdict. Make sure that you have
12 the waterfront covered. It's manifest in both cases.

13 If you are to assume Rubin Parras was Roberto,
14 the facts are not proved here. It's -- nor circumstant-
15 ial evidence on that from Mr. Berberich who has been
16 cooperative, no doubt. So, what really we see in Mr.
17 Berberich's testimony is she lead him to what he
18 testified to. Unfortunately, he couldn't testify to
19 what she told him. So, she may have been a liar, of
20 course.

21 I think I will have to deny the motion with
22 trepidation but --

23 MR. APPLEBY: Should we take care of a request
24 for a faulty charge now?

25 THE COURT: Yes, sir. I have defendant's

1
2 given to you to decide.

3 (Thereby a short recess was taken.)

4 THE COURT: Members of the Jury: You have
5 heard the evidence in the case and the arguments of
6 counsel and now must receive the instructions on the
7 law that governs the case. You, the jurors, are the
8 sole judges of the facts. You must, however, follow
9 the law as given to you in these instructions and
10 apply it to the facts as you find them from the
11 evidence before you. You are not free, nor am I,
12 to substitute our private judgments as to what the
13 law should be, for what the law in fact is.

14 You have been sworn as jurors and truly to
15 try this case and to render a true verdict. You
16 must therefore exclude from your deliberations all
17 bias and prejudice. You must not permit yourselves
18 to be governed by sympathy or by any other consider-
19 ations not founded in the evidence and these instruc-
20 tions on the law.

21 The issues of fact to be tried are those made
22 by the indictment and the defendant's plea of not
23 guilty. Bear in mind that the indictment is the
24 formal method of accusing a person of crime; it is
25 not itself evidence that a defendant committed the

1
2 crime charged, nor is the fact that the indictment was
3 found any evidence of guilt.

4 The charge of the indictment has been found
5 under two different sections of Title 21 United States
6 Code dealing with what are called controlled substances.
7 Under the provisions of Section 812(c), Schedule II(a)(4)
8 cocaine hydrochloride is a controlled substance, and
9 under the provisions of Section 802(16)(B) is a
10 narcotic drug controlled substance.

11 The indictment is drawn under Section 841(a)(1)
12 of Title 21 which so far as we are concerned with it
13 provides that "It shall be unlawful for any person
14 knowingly or intentionally to distribute a controlled
15 substance."

16 Turning now to the indictment, the charge reads
17 as follows: "On or about the 9th day of April 1976,
18 within the Eastern District of New York, the defendant,
19 Yolanda Bolanos and "John Doe" also known as Roberto,
20 did knowingly and intentionally distribute approxi-
21 mately twelve ounces of cocaine hydrochloride as a
22 Schedule 2 narcotic drug controlled substance."

23 The essential elements of the charge, all of
24 which the Government must prove beyond a reasonable
25 doubt, or else you must acquit the defendants, are the

1.
2 following:

3 First, that the substance described in the
4 charge was cocaine hydrochloride;

5 Second, that the defendant was an active
6 participant in the delivery of the cocaine hydrochloride
7 by Yolanda Bolanos to another on April 9, 1976; and

8 Third, that the defendant knew that the substance
9 was cocaine hydrochloride. If the Government estab-
10 lishes all three of the essential elements beyond a
11 reasonable doubt you will convict the defendant. If
12 the Government fails to prove beyond a reasonable
13 doubt any one or more or all of the essential elements
14 of the charge, then you must acquit the defendant.

15 "Distribute", as used in the statute and in
16 the count of the indictment, means simply to deliver
17 a controlled substance, and a distributor means a
18 person who so delivers a controlled substance.

19 You will see that it is an essential element
20 of the indictment that the defendant knew that the
21 substance in question was cocaine hydrochloride. The
22 Government does not have to prove that knowledge by
23 direct evidence, such as a statement coming from the
24 defendant's own lips which those who heard him speak
25 are able to testify to before you, or such other direct

1
2 evidence. But it is necessary for the Government to
3 prove facts and circumstances from which you are able
4 to and do infer beyond a reasonable doubt that the
5 defendant did know the nature of the substance that
6 he was dealing with.

7 While the Government must show that the defen-
8 dant knew that the substance he was dealing with was
9 cocaine hydrochloride, that does not mean that he had
10 to know it by its exact chemical composition or call
11 it by its correct chemical name. It is essential that
12 the Government show, beyond a reasonable doubt, that
13 he understood that the substance was a narcotic drug,
14 whatever the common or code or local name given to it;
15 that is, the Government must show that he understood
16 that he was participating in the legal narcotic drug
17 traffic.

18 The evidence does not suggest and it is not
19 claimed that the defendant made the alleged delivery
20 of the controlled substance to the undercover agent.
21 The Government does not have to prove that. But it
22 must prove beyond a reasonable doubt that the defen-
23 dant took a responsible and knowing part in bringing
24 about Yolanda Bolanos' delivery of the controlled
25 substance to the undercover agent.

1
2 You may find that defendant did take a
3 responsible and knowing part in bringing about the
4 April 9th delivery of narcotics only on the basis of
5 the competent evidence; that is, evidence of his words
6 and acts which you have heard from witnesses who have
7 testified before you that they heard him speak the
8 words and saw him do the acts relied upon as showing
9 his active participation in the April 9th delivery
10 of cocaine.

11
12 (Continued on next page.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 You may not find that he was Yolanda Bolanos'
3 connection or that he was "Roberto" on the basis of
4 one Mr. Rodriguez has testified that Yolanda Bolanos
5 said to him about her connection and his activities,
6 for you have not heard her testify and can form no
7 judgment of her credibility as a witness. However,
8 if you are satisfied from the competent evidence that
9 defendant did take a responsible and knowing part in
10 Yolanda Bolanos' delivery of the cocaine on April 9th,
11 then defendant is responsible as a knowing co-partici-
12 pant for all of the acts and words that Yolanda Bolanos
13 implied to bring the delivery about.

14 You will have noted that neither Yolanda Bolanos
15 nor Libia Butrone has appeared as a witness. Neither
16 of the two women is available as a witness to either
17 party. You may not therefore draw any inference
18 unfavorable to either party from the fact that neither
19 Yolanda Bolanos nor Libia Butrone has been called as
20 a witness. If you conclude from the evidence that
21 defendant, after his arrest, made untruthful statements
22 to Mr. Rodriguez or Mr. Berberick, or both of them,
23 then you may, but you are not required to, infer that
24 the defendant's making of those false statements
25 evidenced a consciousness of guilt of the charge on

1
2 which he was arrested.

3 Proof beyond a reasonable doubt is not proof
4 to an absolute certainty. A few things in life can
5 be so proved. Proof beyond a reasonable doubt is
6 such proof as you would be willing to rely and act
7 upon in the most important of your own affairs. If,
8 after carefully weighing all of the evidence, you have
9 an abiding conviction of the truth of the charge such
10 that you feel conscientiously bound to act upon it,
11 then you would be free from reasonable doubt. If,
12 however, after weighing all of the evidence, you have
13 such a doubt as would cause prudent men to hesitate
14 before acting in matters of importance to themselves,
15 such a doubt would be a reasonable doubt. That does
16 not mean that each bit of the Government's evidence
17 must be found by you to be true beyond a reasonable
18 doubt. It means rather that in some total the
19 Government's evidence must satisfy you beyond a
20 reasonable doubt as to each element of the crime
21 charged or you must acquit.

22 A reasonable doubt may arise not only from the
23 evidence produced, but also from the lack of evidence.
24 Since the burden of proof is always on the Government,
25 a defendant has the right to rely on the failure of

1
2 the Government to prove any essential element of the
3 charge. A defendant may rely, too, on evidence
4 brought out on his cross-examination of witnesses
5 called by the Government. The law does not impose on
6 a defendant the burden or duty of producing any evi-
7 dence.

8 Under our law a defendant has a Constitutional
9 Right to remain silent. No inference unfavorable to
10 the defendant can be drawn from that fact. Your
11 deliberations, accordingly, must exclude consideration
12 of or reference to the matter and must concern itself
13 solely with the evidence before you.

14 A defendant is presumed to be innocent and
15 that presumption accompanies him throughout the trial.
16 It continues unless you are satisfied on all the
17 evidence that the Government has proved defendant's
18 guilt beyond a reasonable doubt.

19 I will not summarize the evidence. You have
20 heard three witnesses, to name them in the order in
21 which they testified: Angel Rodriguez, Agent
22 Berberick and Marquerita Mensa. Eight exhibits have
23 been received in evidence.

24 I have said that you must decide the case on
25 the evidence. The evidence is the testimony of these

1
2 witnesses and the exhibits received in evidence and
3 stipulations between counsel. Statements and arguments
4 of counsel and answers stricken from the record are
5 not evidence. The evidence includes, of course, what
6 is brought out on cross-examination as well as what
7 is testified under direct examination.

8 Your verdict must be based on the evidence.
9 But in your consideration of the evidence, you are
10 not limited to the bare words of the witnesses and
11 the bald facts that you find have been proved. The
12 evidence includes the inferences reasonably to be
13 drawn from the testimony which you hear and the facts
14 which you find have been proved.

15 There are two types of evidence from which you
16 may lawfully find that a fact has been proved. One
17 is direct evidence, such as the testimony of an eye-
18 witness to his observations of the facts to be proved.
19 The other is circumstantial evidence; the proof of
20 facts and circumstances which rationally imply the
21 existence or non-existence of some other fact because
22 such other fact usually and reasonably follows accord-
23 ing to the common experience of man kind.

24 Thus, if you see people coming into a building
25 shaking out dripping umbrellas, and others, about to

20
go out-of-doors, turning back toward their offices,
you infer from these circumstances that it is raining
outside. Or, while you can see from your window that
the sky is full of clouds and the streets are wet,
you also see that passing cars are not using their
windshield wipers and passers-by are carrying their
umbrellas folded under their arms, you infer from
those circumstances that it is not raining.

As a general rule, the law makes no distinction
between direct and circumstantial evidence. If the
evidence, as here, is in part indirect and circum-
stantial, then you apply it, along with all the other
evidence, the same standard of proof. It must, taken
with the other evidence, satisfy you of the defendant's
guilt beyond a reasonable doubt, or else you must
acquit.

You are the sole judges of the credibility of
the witnesses. The motives and state of mind of each
witness as they appear to you and the circumstances
and inducements under which the witness testified are
to be taken into account. Consider any relation each
witness may bear to either side of the case and the
manner in which the verdict might affect him.

You may consider the appearance and the manner

1
2 of each witness on the witness stand, the witness'
3 apparent candor or lack of it, the character of the
4 testimony given, whether the testimony contains in-
5 consistencies or discrepancies, whether it is intrinsic-
6 ally credible or seems to you in whole or part improb-
7 able, and whether it conflicts with or is consistent
8 with other testimony in the case.

9 In weighing the effect of conflict or discrepancy
10 consider whether it pertains to a matter of importance
11 or to unimportant details and whether it seems to you
12 to result from innocent error or from falsehood. If
13 you find a witness has been mistaken or untruthful,
14 in all or in part of the testimony given, then you
15 may give the testimony of that witness such credit,
16 if any, as you think it deserves in the light of the
17 nature and extent of the defects that you find in it.

18 If you conclude that a witness has knowingly
19 testified falsely concerning any material matter, you
20 have a right to distrust that witness' testimony in
21 other particulars. You may reject all the witness'
22 testimony or give it or parts of it the credence you
23 think it deserves.

24 In valuating the evidence concerning the
25 identity of the male on the taped telephone

1
2 conversation with Mr. Rodriguez on the evening of
3 April 7th at 10:30, you may give a voice identifica-
4 tion as much or as little weight as you think it
5 deserves in light of all the evidence. The opportunity
6 a witness had to become familiar with the speaker's
7 voice, the peculiarities of the voice, if any, the
8 time between hearing the voice and its identification,
9 the length of the conversation and the motive, if any,
10 which the witness may have to remember the voice to
11 make or deny the identification. Here, where you have
12 heard the tapes of the two conversations, you must
13 ultimately rely on your own judgment, taking account
14 also of the testimony of Mr. Rodriguez and Mrs.
15 Mensa.

16 One of the jurors asked if they could hear the
17 tapes again and you may.

18 I have sought not to comment on the evidence
19 or to give any impression as to my own view, if I
20 have one, of the relative weight of the evidence. If
21 I have done so, however, you may disregard it entirely
22 for you are the sole judges of the facts.

23 From time to time, in the course of the trial,
24 objections have been made and rulings on evidence
25 given. Draw no inferences from the comparative

1
2 frequency of objections of one or another side or from
3 the comparative record in having objections sustained.
4 Where an objection to a question has been sustained,
5 disregard the question and draw no inferences from its
6 wording about the answer that might have been given.
7 Where an objection is overruled, evidence then
8 received has no special weight just because unsuccessful-
9 fully objected to.

10 Your verdict must be unanimous. It is your
11 duty as jurors to consult with one another and to
12 deliberate with a view to reaching agreement, if you
13 can do so without doing violence to individual judgment.
14 Each of you must decide the case for yourself
15 but do so only after an impartial consideration of
16 the evidence with your fellow jurors. In the course
17 of your deliberations, do not hesitate to re-examine
18 your own views and change your opinion, if convinced
19 it is erroneous. Your task is one of conscience and
20 pride of opinion has no place in matters of conscience.
21 But, do not surrender your honest conviction as to the
22 weight or effect of evidence solely because of the
23 opinion of your fellow jurors or for the mere purpose
24 of returning a verdict.

25 The form of your verdict is simple. Your verdict

1
2 must be either guilty or not guilty and it must be
3 a unanimous verdict.

4 Your verdict will be delivered orally here in
5 open Court by your foreman in response to a question
6 which the Clerk of Court will address to him.

7 You are not partisans. You are judges; judges
8 of the facts. Your sole interest is to ascertain the
9 truth from the evidence in the case.

10 When you have reached a verdict and are ready
11 to report, simply advise the Marshal that you have
12 reached a verdict, without disclosing orally or in
13 writing what your verdict is.

14 Your verdict must not be disclosed to anyone
15 before you deliver it orally in the Courtroom in
16 response to the questions of the Clerk of the Court.

17 If you wish to communicate with the Court, do
18 so in writing, using your foreman, Juror Number 1,
19 as your intermediary and representative. Notify the
20 Marshal when you have any such communication.

21 The Marshal will be seated out here in the
22 Courtroom. If you have a message, knock on the Court-
23 room door and he will take the message from you.

24 There will now be a short recess during which
25 counsel will review the charge with me to make certain

1
2 that nothing has been omitted or misspoken. Then you
3 will retire to the jury room to deliberate your verdict
4 and when you come back, bring your hats and coats with
5 you because at that time, if nothing happens between
6 now and then, you will be excused. Thank you. Now,
7 please don't start discussing the case just yet
8 because you have alternate jurors with you and they
9 will have no part in the deliberations.

10 (Thereby the Jury was excused at the time
11 noted 3:45 P.M.)

12 MR. APPLEBY: Your Honor, perhaps I should
13 have brought this up before. The Government has
14 charged the defendant and Miss Bolanos also with
15 Title 18 United States Code Section 2, aiding and
16 abetting and perhaps that Section of the Code should
17 be read to them and explained.

18 THE COURT: No, I don't think so.

19 MR. APPLEBY: It is covered to a certain
20 degree in your charge.

21 THE COURT: It's covered appropriately, I think
22 because we just give them a lot of words that don't
23 help because then you have to go back and say what
24 that means and take an active part, knowingly. Do
25 either of you have any requests that have been

2 dozen.

3 MR. MALLIN: As to the question of his voice,
4 the Court will just instruct the Jurors --

5 THE COURT: The record has now been closed and
6 his voice is here in this Courtroom is not in evidence.

7 MR. APPLEBY: Your Honor, may we take the
8 speaker closest to the defense and move it to the
9 prosecution table so it might be closer to the
10 Jury?

11 MR. MALLIN: I am sure we can hear it any way.

12 THE COURT: Bring in the Jury.

13 (Thereby the Jury was brought back into the
14 Courtroom.)

15 THE COURT: We have the first of your requests,
16 whether you can have a copy of the translation of the
17 unidentified male voice on the phone. That's that
18 Exhibit 3B. Next, "Is it possible to hear the record-
19 ings again?" I take it you mean, I am assuming or
20 perhaps hoping that you mean, the second conversation
21 on April 7th which has the unidentified male voice
22 on it and the Rodriguez/Parras telephone talk. Are
23 those the ones?

24 JUROR NO. 1: Right.

25 THE COURT: The April 7th 10:30 tal first

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

please.

(Thereby the tape was played.)

THE COURT: Then the one with Mr. Rodriguez.

JUROR NO. 4: Could you run back to where the voice comes on to say "Hello"?

THE COURT: Surely.

(Thereby the tape recording was played.)

THE COURT: Can the jurors hear the first one played again?

(Thereby the tape was played.)

THE COURT: Now, the second question, second part of that question was also to hear the defendant's voice. Now, there is no evidence on that at all from either side so that's not in the record and you must decide the case on the evidence that is before you. All right you may continue deliberating.

THE CLERK: Please rise.

(Thereby the Jury left the Courtroom.)

THE COURT: We have a note from the Jury reading that the Jury has reached a verdict. Bring in the Jury.

(Thereby the Jury was brought into the Courtroom.)

THE COURT: We have your message, members of